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October 16, 2014

Ms. Mary Jo White, Chair
Securities and Exchange Commission
100 F St. NW
Washington, DC 20549-9303
Rule-comments@sec.gov

Re: File No. 81-939, W2007 Grace Acquisition I application for exemption from reporting requirements

Dear Chair White:

I wish to bring to your attention a serious and very public lapse in the SEC's enforcement of the securities laws in the case of W2007 Grace Acquisition I (the "Company"). The Company is seriously delinquent in its SEC filings and appears to be on the verge of violating Rule 13e3-3 regarding going private transactions. This letter is an update of my previous comment letters in this proceeding. [1]

[1] For the record, I am a shareholder of the Company's Class B preferred shares. Here is a brief summary of the case:

Equity Inns was an NYSE-listed REIT. Goldman Sachs engineered a leveraged buyout in 2007 that purchased the common but not the preferred stock of Equity Inns, and the resulting entity is called W2007 Grace Acquisition I. The Company delisted the preferred shares from the NYSE and made them non-DTC eligible, meaning that shareholders have to use antiquated paper certificates to trade the shares. The

In summary:

- W2007 Grace Acquisition I is seriously delinquent in its reporting obligations.
- Commission inaction on this public violation calls into serious question the credibility of its "broken window" approach to enforcement. Enforcement delayed is enforcement denied.
- It appears that Goldman Sachs will soon solicit the public shareholders in a coercive tender offer at a steeply discounted price. Given the Company's longstanding disregard for the public shareholders, there is a huge risk that public shareholders will not receive appropriate disclosure as part of the forthcoming solicitations. The SEC needs to take steps to insure compliance with the proxy rules, including Rule 13e-3, in this situation.
- The SEC should immediately order the Company to resume filing financial statements with the SEC and ensure that adequate disclosure is provided to the public shareholders.

There have been three major developments in this ongoing soap opera since my last comment letter:

1. An affiliate of Goldman Sachs has exercised a "warrant" to acquire a 97% interest in 106 of the Company's 126 hotels. This effectively removes assets out of the Company to the

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Company also filed a Form 15 to suspend its registration with the SEC. The preferred shares now trade on the so-called "gray market" under the ticker symbols WGBCP and WGCCP. The Company provides no public financial information and requires shareholders and potential investors to sign a non-disclosure agreement before getting some limited but stale financial information.

The Company stopped paying dividends to the preferred shareholders in 2008, which entitles the preferred shareholders to two seats on the board of directors. However, the board of directors (all Goldman Sachs employees) has failed to fill the two vacant positions belonging to the preferred shareholders despite the authority to do so.

The Company filed an application in April 2013 for an exemption from its reporting requirements based on 2012 data. The Company alleged that 300 separate trusts created by Mr. Joseph Sullivan should not be counted as shareholders "of record" for determining whether the Company had enough shareholders "of record" to require it to resume filing required financial statements with the SEC. The Company alleged in its petition that, not counting the Sullivan trusts, it had less than 300 shareholders of record, a statement that is disputed by myself and other shareholders.

The number of shareholders of record has grown in 2013 and is now clearly above the regulatory threshold that would require the Company to resume making its required filings with the Commission. Nevertheless, the Company continues to flagrantly violate its reporting obligations and has not made any of its required filings with the SEC.

See my previous comment letters for more details at http://www.sec.gov/comments/81-939/81939-41.pdf, http://www.sec.gov/comments/81-939/81939-38.pdf, http://www.sec.gov/comments/81-939/81939-36.pdf, and http://www.sec.gov/comments/81-939/81939-26.pdf.

detriment of the preferred shareholders. It is not clear what consideration, if any, was paid to acquire or exercise the warrant. This warrant was granted by Goldman Sachs to Goldman Sachs as part of a debt restructuring arranged by Goldman Sachs of debt originally provided by Goldman Sachs.[2] Given the lack of disclosure, it is natural to suspect that this was the culmination of a series of conflicted self-dealing transactions that tunneled assets out of the Company and into the hands of various Goldman affiliates to the detriment of the public shareholders. It should be noted that these conflicts of interest occurred during a period when Goldman's conflict management was seriously inadequate.[3]

2. The Company has announced plans to sell all 126 of its hotels for $1.925 billion to American Realty Capital Hospitality Trust, Inc., a non-traded REIT.[4]

3. The Company has announced a proposal to solicit the public preferred shareholders for their approval of a merger with another Goldman Sachs affiliate. I suspect this will be a

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[2] My references here to Goldman Sachs include the many Goldman Sachs-controlled entities involved in this case, including without limitation the Company, Goldman Sachs Mortgage Company, PFD Holdings LLC, various Whitehall funds, the Archon Group, and WNT Holdings LLC.

Goldman Sachs provided the financing for the leveraged buyout (LBO). When the LBO allegedly ran into trouble in 2008, the debt agreements were subsequently renegotiated several times without notice or disclosure to the public shareholders. During these renegotiations (in which Goldman was effectively negotiating with itself, a clear conflict of interest), a warrant was issued that gave the holder the rights to 97% of 106 of the Company's hotels. This warrant ended up, conveniently enough, at another Goldman Sachs affiliate. The lack of adequate disclosure creates the suspicion that this was egregious self dealing to the detriment of the public shareholders. The press release for the warrant exercise can be found at http://www.snl.com/irweblinkx/file.aspx?IID=103147&FID=1001185975.

[3] See Consent of Defendant Goldman, Sachs & Co., SEC v. Goldman, Sachs & Co. et al., 10-CV-3229 (BSJ), United States District Court, Southern District of New York, at 2 (July 14, 2010), available at http://www.sec.gov/litigation/litreleases/2010/consent-pr2010-123.pdf. See also "Inside the New York Fed: Secret Recordings and a Culture Clash" by Jake Bernstein, available at http://www.propublica.org/article/carmen-segarras-secret-recordings-from-inside-new-york-fed.

[4] The press release can be found at http://www.snl.com/irweblinkx/file.aspx?IID=103147&FID=1500061132.

As a result of the announced deal, some limited financial information about the Company has been made public by American Realty Capital Hospitality Trust in its 8K filing: http://www.sec.gov/Archives/edgar/data/1583077/000114420414034823/0001144204-14-034823-index.htm

coercive offer that will penalize the public shareholders. [5] I also suspect that, lacking prompt action by the SEC, that the shareholders will not receive appropriate disclosure in compliance with Rule 13e3-3.

**The Company is still in flagrant and conspicuous violation of its reporting requirements.**

What is just as important in this case is what has NOT happened. The Company has not filed any of its required filings with the SEC. As I demonstrated in my previous comment letter of May 7, 2014, the Company had well over 300 shareholders of record as of December 31, 2013 and probably has had over 300 for several years before.[6] This would have triggered a resumption of their requirement to file public financial information with the SEC. Furthermore, the Company has well over 1,000 beneficial owners of its preferred shares. Whether or not the Sullivan trusts at issue in File 81-939 should be counted as one shareholder "of record" or 300 is a moot point.

The Company has not made any of its required filings in 2014 and is in flagrant and conspicuous violation of its filing requirements. Permitting billion-dollar enterprises get away with such flagrant violations causes serious damage to the SEC's reputation as an agency capable of enforcing U.S. securities laws to protect the public.[7] This appears to be more than just a "broken window" and more like a grand theft burglary in progress.

In the meantime, while these deals are going on, the Company has not publicly disclosed any meaningful financial information. There is no representation of the preferred shareholders on the board of directors, in clear violation of charter provisions that grant two directorships to preferred shareholders.[8]

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[5] http://www.snl.com/irweblinkx/file.aspx?IID=103147&FID=1500063400

[6] Under SEC Rule 12(h)(3), an SEC registrant that has less than 300 shareholders "of record" may suspend their filing requirements by filing a Form 15, which the Company filed in November, 2007. However, if the company no longer meets the requirements for suspending filing (e.g. less than 300 shareholders of record), then it must resume filing with the SEC within 120 days of the end of the fiscal year in which it no longer qualifies for a suspension of its filing requirements under Rule 12(h)(3)(e).

[7] As of March 31, 2014, the Company reported over $1.4 billion in assets according to American Realty Capital Hospitality Trust. See http://www.sec.gov/Archives/edgar/data/1583077/000114420414034823/v380013_ex99-3.htm

[8] The Company has conveniently claimed a lack of a quorum at the elections that were attempted to elect directors. See the FAQ posted on the equityinns.com web site at http://www.snl.com/irweblinkx/file.aspx?iid=103147&fid=1500061819. The Company's board of directors has, without public explanation, egregiously failed to exercise its authority to fill the vacant board seats, to the detriment of the preferred shareholders.

**The Company appears to be on the verge of violating Rule 13e-3.**

It now appears that the long-suffering public shareholders will be solicited to approve a merger between two Goldman affiliates that will result in their being cashed out at 66 cents on the dollar while other Goldman affiliates will walk away with millions.[9] Will there be appropriate disclosure so that the shareholders can properly evaluate the offer? Will the proxy solicitation rules be adhered to?

Given the paucity of information provided to shareholders, even those who have signed NDAs, it is likely that the voting materials for the tender offer will be minimal. The voting materials provided to preferred shareholders back when the Company went through the pretenses of holding director elections were noteworthy for their lack of information about the candidates for the board of directors or the financial status of the company or the executive compensation of the officers (all of whom are Goldman employees). This information was far, far less than the SEC would permit in a proxy statement for a compliant registrant.

Given the Company's refusal to comply with its disclosure requirements under U.S. securities laws, it is a reasonable fear that the Company will fail to comply with Rule 13e-3, which provides procedural safeguards for going private transactions. It is customary in such transactions for there to be a discussion of the process used to determine the terms of the transaction as well as a fairness opinion and a discussion of appraisal rights.[10] Without this important information, the shareholders will not be able to determine whether they should approve the proposed offer.

**Prompt action is necessary to preserve the SEC's reputation.**

Despite the pendency of this proceeding for more than a year at the SEC, there have been no visible actions by the SEC to resolve or even investigate this matter. Even if the SEC and FINRA are quietly investigating the other violations of U.S. securities laws that appear to have been committed in this case (which they should be doing), there is no reason why the SEC cannot order the Company to resume its filings immediately while such quiet investigations continue.[11]

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[9] The promised solicitation is for $26 per share. The current value of the par plus accrued but unpaid dividends owed to the preferred shareholders is approximately $38 per share. $26/$38 is approximately 68 cents.

[10] See http://www.law360.com/articles/453469/spotlight-on-rule-13e-3 for a discussion of Rule 13e-3.

[11] In addition to the violation of filing requirements, other potential violations include violation of state tender offer statutes, FINRA trade reporting rules, and insider trading. Affiliates of the Company, presumably aware of the Company's recovering financial position despite the total lack of public financial information, have acquired a majority of the preferred shares at very low prices before the prices

This proceeding (File 81-939) was opened by the Company in an attempt to obtain an exemption from its filing requirements. The Company seeks to get the SEC to rule that 300 trusts created by Mr. Joseph Sullivan should be counted as one shareholder of record for purposes of determining whether the Company is required to resume its filing obligations. My understanding is that the SEC staff has not even bothered to interview Mr. Sullivan regarding the nature of these trusts. This is shocking. Why has there been such inaction? At least the investigators in the Madoff investigation went through the motions of interviewing Bernie Madoff. Or has the ghost of the Pequot case infected this proceeding?[12] Is the Commission staff too afraid to order affiliates of Goldman Sachs to obey the law by filing the required financial statements?

Or is anyone working on this at all? Has this case somehow fallen between bureaucratic cracks? It is customary for the SEC's web site to show memoranda of meetings between SEC staff and interested parties on various files.[13] I note that the web site showing public comments on File No. 81-939 contains no such notices as of this writing. Does this mean that the staff has not even met with anyone, not even the Company? Or have such meetings been held in secret and not reported in the customary manner?

This should not be a complicated case. All the SEC staff has to do is look at the shareholder list and count. One can easily see far more than 300 Class B and Class C shareholders listed as of December 31, 2013 and probably much earlier as well, even without the Sullivan trusts.[14] How long does it take to count to 300? If there were less than 300 names, then the SEC would need to decide whether to count the over 100 Class D shareholders along with the Class B and C shareholders, which would also put the Company over the required 300 shareholders of record

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increased. These trades are for more shares than have been reported traded to the public market, an apparent violation of FINRA trade reporting rules.

Furthermore, this acquisition of a majority of the shares occurred without any public notification that the 10% limit on shareholdings had been removed. Thus, public investors were unaware of the fact that any one entity could even acquire a majority of the shares. This appears to be trading on the basis of material nonpublic information in violation of Rule 10b5.

[12] http://pogoarchives.org/m/fo/sec-oig-report-20080930.pdf

[13] For an example, see http://www.sec.gov/comments/s7-12-10/s71210-120.pdf.

[14] It is my belief that the Company had over 300 shareholders of record as far back as at least December 31, 2010 and perhaps earlier. The Company may attempt to disregard and not count some records in the list of shareholders as duplicates. SEC Rule 12g5-1(a)(6) permits that substantially similar names can be counted as held of record by one person "where the issuer has reason to believe because of the address or other indications that such names represent the same person". Given the large number of beneficial shareholders, it would be ludicrous to pretend that the Company has any legitimate reason to believe that any purported duplicates, such as shares registered at the same broker or custodian, represent the same person. For more details see my May 14, 2014 comment letter.

needed to trigger a resumption of the Company's filing requirements.[15] And that is not even counting the 300 Sullivan trusts.

For your convenience, I am attaching copies of the shareholder record as of 12/31/2013, as well as the NOBO list. (As these contain customer-specific information, the customer names and addresses information should be redacted before posting on the SEC web site.) Note that there are 709 separate unique Holder IDs on the list. If one excludes the 300 Sullivan trusts (which should only be done after examination of the nature of each trust), then there are still 409 separate Holder IDs.

There do appear to be some similar names and addresses in the list. I suspect the Company may argue that such apparent duplicates should not be counted. For example, there are 8 separate and distinct Holder IDs on the Computershare records for Charles Schwab and Co. However, SEC Rule 12g5-1(a)(6) is quite clear that in order to combine such apparent duplicates, the issuer must have reason to believe that such names present the same person:

> *(6) Securities registered in substantially similar names where the issuer has reason to believe because of the address or other indications that such names* ***represent the same person****, may be included as held of record by one person.*

It would be ludicrous for the Company to assert that the shares held of record under the various and distinct Holder IDs at Schwab, Edward Jones, or National Financial Services represent the same person. Thus, all of the individual Holder IDs should be counted as holders of record for the purposes of compliance with SEC registration requirements. Indeed, the NOBO list identifies 88 separate nonobjecting beneficial owners at Schwab of the Class B preferred shares and 38 separate nonobjecting beneficial owners at Schwab of the Class C preferred shares.

In order to determine whether the Sullivan trusts represent one shareholder of record or many, the SEC should examine the beneficiaries of the trusts. It would make sense for the SEC to contact Mr. Sullivan to obtain more information about the nature of the trusts in order to determine whether those trusts represent the same person or persons. It is my understanding that the SEC has not done so. The failure of the SEC staff to even interview Mr. Sullivan regarding this case is inexplicable and inexcusable.

The attached NOBO list contains approximately 800 names. There are undoubtedly more shareholders who are objecting beneficial owners (OBOs) and who are not on the list. My understanding based on communications with Broadridge is that a communication to shareholders would be sent to about 1,600 shareholders.

As the old saying goes, justice delayed is justice denied. Enforcement delayed is also enforcement denied.

[15] The Company has over 100 Class D shareholders. This class of shares was likely created to make sure that the Company would have the 100 shareholder minimum to retain its REIT status. Note that the Company has without public notice relinquished its REIT status.

I urge the SEC to immediately order the Company to resume filing the appropriate financial statements, and to examine those statements carefully to determine their compliance with U.S. securities laws. The Company should be put on notice that it must comply with all U.S. securities laws, including Rule 13e-3.

This case demonstrates the serious need for the SEC to reconsider how it protects the public shareholders in companies that are not SEC registrants. Recent laws such as the JOBS Act will serve to increase the number of such shareholders. The federal securities laws still apply to these companies. State securities regulators are not up to the task of regulating these companies, many of which, like W2007 Grace Acquisition I, are national in scope.

Respectfully submitted,

James J. Angel

CC: Commissioner Aguilar
Commissioner Stein
Commissioner Gallagher
Commissioner Piwower
Rule-comments@sec.gov

Appendix:

§ 240.12h-3 Suspension of duty to file reports under section 15(d).

**(a)** Subject to paragraphs (c) and (d) of this section, the duty under section 15(d) to file reports required by section 13(a) of the Act with respect to a class of securities specified in paragraph (b) of this section shall be suspended for such class of securities immediately upon filing with the Commission a certification on Form 15 (17 CFR 249.323) if the issuer of such class has filed all reports required by section 13(a), without regard to Rule 12b-25 (17 CFR 249.322), for the shorter of its most recent three fiscal years and the portion of the current year preceding the date of filing Form 15, or the period since the issuer became subject to such reporting obligation. If the certification on Form 15 is subsequently withdrawn or denied, the issuer shall, within 60 days, file with the Commission all reports which would have been required if such certification had not been filed.

**(b)** The classes of securities eligible for the suspension provided in paragraph (a) of this section are:

**(1)** Any class of securities, other than any class of asset-backed securities, held of record by:

**(i)** Less than 300 persons; or

**(ii)** By less than 500 persons, where the total assets of the issuer have not exceeded $10 million on the last day of each of the issuer's three most recent fiscal years; and

**(2)** Any class or securities deregistered pursuant to section 12(d) of the Act if such class would not thereupon be deemed registered under section 12(g) of the Act or the rules thereunder.

**NOTE TO PARAGRAPH (*B*):**

The suspension of classes of asset-backed securities is addressed in § 240.15d-22.

**(c)** This section shall not be available for any class of securities for a fiscal year in which a registration statement relating to that class becomes effective under the Securities Act of 1933, or is required to be updated pursuant to section 10(a)(3) of the Act, and, in the case of paragraph (b)(1)(ii), the two succeeding fiscal years; *Provided, however,* That this paragraph shall not apply to the duty to file reports which arises solely from a registration statement filed by an issuer with no significant assets, for the reorganization of a non-reporting issuer into a one subsidiary holding company in which equity security holders receive the same proportional interest in the holding company as they held in the non-reporting issuer, except for changes resulting from the exercise of dissenting shareholder rights under state law.

**(d)** The suspension provided by this rule relates only to the reporting obligation under section 15(d) with respect to a class of securities, does not affect any other duties imposed on that class of securities, and shall continue as long as either criteria (i) or (ii) of paragraph (b)(1) is met on the first day of any subsequent fiscal year; *Provided, however,* That such criteria need not be met if the duty to file reports arises solely from a registration statement filed by an issuer with no significant assets in a reorganization of a non-reporting company into a one subsidiary holding company in which equity security holders receive the same proportional interest in the holding company as they held in the non-reporting issuer except for changes resulting from the exercise of dissenting shareholder rights under state law.

**(e)** If the suspension provided by this section is discontinued because a class of securities does not meet the eligibility criteria of paragraph (b) of this section on the first day of an issuer's fiscal year, then the issuer shall resume periodic reporting pursuant to section 15(d) of the Act by filing an annual report on Form 10-K for its preceding fiscal year, not later than 120 days after the end of such fiscal year.

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**§240.13e-3 Going private transactions by certain issuers or their affiliates.**

(a) *Definitions.* Unless indicated otherwise or the context otherwise requires, all terms used in this section and in Schedule 13E-3 [§240.13e-100] shall have the same meaning as in the Act or elsewhere in the General Rules and Regulations thereunder. In addition, the following definitions apply:

(1) An *affiliate* of an issuer is a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with such issuer. For the purposes of this section only, a person who is not an affiliate of an issuer at the commencement of such person's tender offer for a class of equity securities of such issuer will not be deemed an affiliate of such issuer prior to the stated termination of such tender offer and any extensions thereof;

(2) The term *purchase* means any acquisition for value including, but not limited to, (i) any acquisition pursuant to the dissolution of an issuer subsequent to the sale or other disposition of substantially all the assets of such issuer to its affiliate, (ii) any acquisition pursuant to a merger, (iii) any acquisition of fractional interests in connection with a reverse stock split, and (iv) any acquisition subject to the control of an issuer or an affiliate of such issuer;

(3) A *Rule 13e-3 transaction* is any transaction or series of transactions involving one or more of the transactions described in paragraph (a)(3)(i) of this section which has either a reasonable likelihood or a purpose of producing, either directly or indirectly, any of the effects described in paragraph (a)(3)(ii) of this section;

(i) The transactions referred to in paragraph (a)(3) of this section are:

(A) A purchase of any equity security by the issuer of such security or by an affiliate of such issuer;

(B) A tender offer for or request or invitation for tenders of any equity security made by the issuer of such class of securities or by an affiliate of such issuer; or

(C) A solicitation subject to Regulation 14A [§§240.14a-1 to 240.14b-1] of any proxy, consent or authorization of, or a distribution subject to Regulation 14C [§§240.14c-1 to 14c-101] of information statements to, any equity security holder by the issuer of the class of securities or by an affiliate of such issuer, in connection with: a merger, consolidation, reclassification, recapitalization, reorganization or similar corporate transaction of an issuer or between an issuer (or its subsidiaries) and its affiliate; a sale of substantially all the assets of an issuer to its affiliate

or group of affiliates; or a reverse stock split of any class of equity securities of the issuer involving the purchase of fractional interests.

(ii) The effects referred to in paragraph (a)(3) of this section are:

(A) Causing any class of equity securities of the issuer which is subject to section 12(g) or section 15(d) of the Act to become eligible for termination of registration under Rule 12g-4 (§240.12g-4) or Rule 12h-6 (§240.12h-6), or causing the reporting obligations with respect to such class to become eligible for termination under Rule 12h-6 (§240.12h-6); or suspension under Rule 12h-3 (§240.12h-3) or section 15(d); or

(B) Causing any class of equity securities of the issuer which is either listed on a national securities exchange or authorized to be quoted in an inter-dealer quotation system of a registered national securities association to be neither listed on any national securities exchange nor authorized to be quoted on an inter-dealer quotation system of any registered national securities association.

(4) An *unaffiliated security holder* is any security holder of an equity security subject to a Rule 13e-3 transaction who is not an affiliate of the issuer of such security.

(b) *Application of section to an issuer (or an affiliate of such issuer) subject to section 12 of the Act.* (1) It shall be a fraudulent, deceptive or manipulative act or practice, in connection with a Rule 13e-3 transaction, for an issuer which has a class of equity securities registered pursuant to section 12 of the Act or which is a closed-end investment company registered under the Investment Company Act of 1940, or an affiliate of such issuer, directly or indirectly

(i) To employ any device, scheme or artifice to defraud any person;

(ii) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(iii) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

(2) As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices in connection with any Rule 13e-3 transaction, it shall be unlawful for an issuer which has a class of equity securities registered pursuant to section 12 of the Act, or an affiliate of such issuer, to engage, directly or indirectly, in a Rule 13e-3 transaction unless:

(i) Such issuer or affiliate complies with the requirements of paragraphs (d), (e) and (f) of this section; and

(ii) The Rule 13e-3 transaction is not in violation of paragraph (b)(1) of this section.

(c) *Application of section to an issuer (or an affiliate of such issuer) subject to section 15(d) of the Act.* (1) It shall be unlawful as a fraudulent, deceptive or manipulative act or practice for an issuer which is required to file periodic reports pursuant to Section 15(d) of the Act, or an affiliate of such issuer, to engage, directly or indirectly, in a Rule 13e-3 transaction unless such issuer or affiliate complies with the requirements of paragraphs (d), (e) and (f) of this section.

(2) An issuer or affiliate which is subject to paragraph (c)(1) of this section and which is soliciting proxies or distributing information statements in connection with a transaction described in paragraph (a)(3)(i)(A) of this section may elect to use the timing procedures for conducting a solicitation subject to Regulation 14A (§§240.14a-1 to 240.14b-1) or a distribution subject to Regulation 14C (§§240.14c-1 to 240.14c-101) in complying with paragraphs (d), (e) and (f) of this section, provided that if an election is made, such solicitation or distribution is conducted in accordance with the requirements of the respective regulations, including the filing of preliminary copies of soliciting materials or an information statement at the time specified in Regulation 14A or 14C, respectively.

(d) *Material required to be filed.* The issuer or affiliate engaging in a Rule 13e-3 transaction must file with the Commission:

(1) A Schedule 13E-3 (§240.13e-100), including all exhibits;

(2) An amendment to Schedule 13E-3 reporting promptly any material changes in the information set forth in the schedule previously filed; and

(3) A final amendment to Schedule 13E-3 reporting promptly the results of the Rule 13e-3 transaction.

(e) *Disclosure of information to security holders.* (1) In addition to disclosing the information required by any other applicable rule or regulation under the federal securities laws, the issuer or affiliate engaging in a §240.13e-3 transaction must disclose to security holders of the class that is the subject of the transaction, as specified in paragraph (f) of this section, the following:

(i) The information required by Item 1 of Schedule 13E-3 (§240.13e-100) (Summary Term Sheet);

(ii) The information required by Items 7, 8 and 9 of Schedule 13E-3, which must be prominently disclosed in a "Special Factors" section in the front of the disclosure document;

(iii) A prominent legend on the outside front cover page that indicates that neither the Securities and Exchange Commission nor any state securities commission has: approved or disapproved of the transaction; passed upon the merits or fairness of the transaction; or passed upon the adequacy or accuracy of the disclosure in the document. The legend also must make it clear that any representation to the contrary is a criminal offense;

(iv) The information concerning appraisal rights required by §229.1016(f) of this chapter; and

(v) The information required by the remaining items of Schedule 13E-3, except for §229.1016 of this chapter (exhibits), or a fair and adequate summary of the information.

INSTRUCTIONS TO PARAGRAPH (e)(1): 1. If the Rule 13e-3 transaction also is subject to Regulation 14A (§§240.14a-1 through 240.14b-2) or 14C (§§240.14c-1 through 240.14c-101), the registration provisions and rules of the Securities Act of 1933, Regulation 14D or §240.13e-4, the information required by paragraph (e)(1) of this section must be combined with the proxy statement, information statement, prospectus or tender offer material sent or given to security holders.

2. If the Rule 13e-3 transaction involves a registered securities offering, the legend required by §229.501(b)(7) of this chapter must be combined with the legend required by paragraph (e)(1)(iii) of this section.

3. The required legend must be written in clear, plain language.

(2) If there is any material change in the information previously disclosed to security holders, the issuer or affiliate must disclose the change promptly to security holders as specified in paragraph (f)(1)(iii) of this section.

(f) *Dissemination of information to security holders.* (1) If the Rule 13e-3 transaction involves a purchase as described in paragraph (a)(3)(i)(A) of this section or a vote, consent, authorization, or distribution of information statements as described in paragraph (a)(3)(i)(C) of this section, the issuer or affiliate engaging in the Rule 13e-3 transaction shall:

(i) Provide the information required by paragraph (e) of this section: (A) In accordance with the provisions of any applicable Federal or State law, but in no event later than 20 days prior to: any such purchase; any such vote, consent or authorization; or with respect to the distribution of information statements, the meeting date, or if corporate action is to be taken by means of the written authorization or consent of security holders, the earliest date on which corporate action may be taken: *Provided, however,* That if the purchase subject to this section is pursuant to a tender offer excepted from Rule 13e-4 by paragraph (g)(5) of Rule 13e-4, the information required by paragraph (e) of this section shall be disseminated in accordance with paragraph (e) of Rule 13e-4 no later than 10 business days prior to any purchase pursuant to such tender offer, (B) to each person who is a record holder of a class of equity securities subject to the Rule 13e-3 transaction as of a date not more than 20 days prior to the date of dissemination of such information.

(ii) If the issuer or affiliate knows that securities of the class of securities subject to the Rule 13e-3 transaction are held of record by a broker, dealer, bank or voting trustee or their nominees, such issuer or affiliate shall (unless Rule 14a-13(a) [§240.14a-13(a)] or 14c-7 [§240.14c-7] is applicable) furnish the number of copies of the information required by paragraph (e) of this section that are requested by such persons (pursuant to inquiries by or on behalf of the issuer or

affiliate), instruct such persons to forward such information to the beneficial owners of such securities in a timely manner and undertake to pay the reasonable expenses incurred by such persons in forwarding such information; and

(iii) Promptly disseminate disclosure of material changes to the information required by paragraph (d) of this section in a manner reasonably calculated to inform security holders.

(2) If the Rule 13e-3 transaction is a tender offer or a request or invitation for tenders of equity securities which is subject to Regulation 14D [§§240.14d-1 to 240.14d-101] or Rule 13e-4 [§240.13e-4], the tender offer containing the information required by paragraph (e) of this section, and any material change with respect thereto, shall be published, sent or given in accordance with Regulation 14D or Rule 13e-4, respectively, to security holders of the class of securities being sought by the issuer or affiliate.

(g) *Exceptions.* This section shall not apply to:

(1) Any Rule 13e-3 transaction by or on behalf of a person which occurs within one year of the date of termination of a tender offer in which such person was the bidder and became an affiliate of the issuer as a result of such tender offer:*Provided,* That the consideration offered to unaffiliated security holders in such Rule 13e-3 transaction is at least equal to the highest consideration offered during such tender offer and *Provided further,* That:

(i) If such tender offer was made for any or all securities of a class of the issuer;

(A) Such tender offer fully disclosed such person's intention to engage in a Rule 13e-3 transaction, the form and effect of such transaction and, to the extent known, the proposed terms thereof; and

(B) Such Rule 13e-3 transaction is substantially similar to that described in such tender offer; or

(ii) If such tender offer was made for less than all the securities of a class of the issuer:

(A) Such tender offer fully disclosed a plan of merger, a plan of liquidation or a similar binding agreement between such person and the issuer with respect to a Rule 13e-3 transaction; and

(B) Such Rule 13e-3 transaction occurs pursuant to the plan of merger, plan of liquidation or similar binding agreement disclosed in the bidder's tender offer.

(2) Any Rule 13e-3 transaction in which the security holders are offered or receive only an equity security *Provided,*That:

(i) Such equity security has substantially the same rights as the equity security which is the subject of the Rule 13e-3 transaction including, but not limited to, voting, dividends, redemption

and liquidation rights except that this requirement shall be deemed to be satisfied if unaffiliated security holders are offered common stock;

(ii) Such equity security is registered pursuant to section 12 of the Act or reports are required to be filed by the issuer thereof pursuant to section 15(d) of the Act; and

(iii) If the security which is the subject of the Rule 13e-3 transaction was either listed on a national securities exchange or authorized to be quoted in an interdealer quotation system of a registered national securities association, such equity security is either listed on a national securities exchange or authorized to be quoted in an inter-dealer quotation system of a registered national securities association.

(3) [Reserved]

(4) Redemptions, calls or similar purchases of an equity security by an issuer pursuant to specific provisions set forth in the instrument(s) creating or governing that class of equity securities; or

(5) Any solicitation by an issuer with respect to a plan of reorganization under Chapter XI of the Bankruptcy Act, as amended, if made after the entry of an order approving such plan pursuant to section 1125(b) of that Act and after, or concurrently with, the transmittal of information concerning such plan as required by section 1125(b) of that Act.

(6) Any tender offer or business combination made in compliance with §230.802 of this chapter, §240.13e-4(h)(8) or §240.14d-1(c) or any other kind of transaction that otherwise meets the conditions for reliance on the cross-border exemptions set forth in §240.13e-4(h)(8), §240.14d-1(c) or §230.802 of this chapter except for the fact that it is not technically subject to those rules.

INSTRUCTION TO §240.13e-3(g)(6): To the extent applicable, the acquiror must comply with the conditions set forth in §230.802 of this chapter, and §§240.13e-4(h)(8) and 14d-1(c). If the acquiror publishes or otherwise disseminates an informational document to the holders of the subject securities in connection with the transaction, the acquiror must furnish an English translation of that informational document, including any amendments thereto, to the Commission under cover of Form CB (§239.800 of this chapter) by the first business day after publication or dissemination. If the acquiror is a foreign entity, it must also file a Form F-X (§239.42 of this chapter) with the Commission at the same time as the submission of the Form CB to appoint an agent for service in the United States.

[44 FR 46741, Aug. 8, 1979, as amended at 47 FR 11466, Mar. 16, 1982; 48 FR 19877, May 3, 1983; 48 FR 34253, July 28, 1983; 51 FR 42059, Nov. 20, 1986; 61 FR 24656, May 15, 1996; 64 FR 61403, 64 FR 61452, Nov. 10, 1999; 73 FR 17813, Apr. 1, 2008; 73 FR 58323, Oct. 6, 2008; 73 FR 60090, Oct. 9, 2008]