

**§ 229.402 (Item 402) Executive compensation.**

**(a) General—(1) Treatment of specific types of issuers—(i) Small business issuers.** A registrant that qualifies as “small business issuer,” as defined by Item 10(a)(1) of Regulation S-B [17 CFR 228.10(a)(1)], will be deemed to comply with this item if it provides the information required by paragraph (b) (Summary Compensation Table), paragraphs (c)(1) and (c)(2)(i)–(v) (Option/SAR Grants Table), paragraph (d) (Aggregated Option/SAR Exercise and Fiscal Year-End Option/SAR Value Table), paragraph (e) (Long-Term Incentive Plan Awards Table), paragraph (g) (Compensation of Directors), paragraph (h) (Employment Contracts, Termination of Employment and Change in Control Arrangements) and paragraph (i) (1) and (2) (Report on Repricing of Options/SARs) of this item.

(ii) *Foreign private issuers.* A foreign private issuer will be deemed to comply with this item if it provides the information required by Items 6.B. and 6.E.2. of Form 20-F (17 CFR 249.220f), with more detailed information provided if otherwise made publicly available.

(2) *All compensation covered.* This item requires clear, concise and understandable disclosure of all plan and non-plan compensation awarded to, earned by, or paid to the named executive officers designated under paragraph (a)(3) of this item, and directors covered by paragraph (g) of this item by any person for all services rendered in all capacities to the registrant and its subsidiaries, unless otherwise specified in this item. Except as provided by paragraph (a)(5) of this item, all such compensation shall be reported pursuant to this item, even if also called for by another requirement, including transactions between the registrant and a third party where the primary purpose of the transaction is to furnish compensation to any such named executive officer or director. No item reported as compensation for one fiscal year need be reported as compensation for a subsequent fiscal year.

(3) *Persons covered.* Disclosure shall be provided pursuant to this item for each of the following (the “named executive officers”):

(i) All individuals serving as the registrant’s chief executive officer or acting in a similar capacity during the last completed fiscal year (“CEO”), regardless of compensation level;

(ii) The registrant’s four most highly compensated executive officers other than the CEO who were serving as executive officers at the end of the last completed fiscal year; and

(iii) Up to two additional individuals for whom disclosure would have been provided pursuant to paragraph (a)(3)(ii) of this item but for the fact that the individual was not serving as an executive officer of the registrant at the end of the last completed fiscal year.

*Instructions to Item 402(a)(3): 1. Determination of Most Highly Compensated Executive Officers.* The determination as to which executive officers are most highly compensated shall be made by reference to total annual salary and bonus for the last completed fiscal year (as required to be disclosed pursuant to paragraph (b)(2)(iii) (A) and (B) of this item), but including the dollar value of salary or bonus amounts forgone pursuant to Instruction 3 to paragraph (b)(2)(iii) (A) and (B) of this item: *Provided, however,* That no disclosure need be provided for any executive officer, other than the CEO, whose total annual salary and bonus, as so determined, does not exceed \$100,000.

*2. Inclusion of Executive Officer of Subsidiary.* It may be appropriate in certain circumstances for a registrant to include an executive officer of a subsidiary in the disclosure required by this item. *See* Rule 3b-7 under the Exchange Act [17 CFR 240.3b-7].

*3. Exclusion of Executive Officer due to Unusual or Overseas Compensation.* It may be appropriate in limited circumstances for a registrant not to include in the disclosure required by this item an individual, other than its CEO, who is one of the registrant’s most highly compensated executive officers. Among the factors that should be considered in determining not to name an individual are: (a) the distribution or accrual of an unusually large amount of cash compensation (such as a bonus or commission) that is not part of a recurring arrangement and is unlikely to continue; and (b) the payment of amounts of cash compensation relating to overseas assignments that may be attributed predominantly to such assignments.

(4) *Information for full fiscal year.* If the CEO served in that capacity during any part of a fiscal year with respect to which information is required, information should be provided as to all of

his or her compensation for the full fiscal year. If a named executive officer (other than the CEO) served as an executive officer of the registrant (whether or not in the same position) during any part of a fiscal year with respect to which information is required, information shall be provided as to all compensation of that individual for the full fiscal year.

(5) *Transactions with third parties reported under item 404.* This item includes transactions between the registrant and a third party where the primary purpose of the transaction is to furnish compensation to a named executive officer. No information need be given in response to any paragraph of this item, other than paragraph (j), as to any such third-party transaction if the transaction has been reported in response to Item 404 of Regulation S-K (§ 229.404).

(6) *Omission of table or column.* A table or column may be omitted, if there has been no compensation awarded to, earned by or paid to any of the named executives required to be reported in that table or column in any fiscal year covered by that table.

(7) *Definitions.* For purposes of this item:

(i) The term *stock appreciation rights (SARs)* refers to SARs payable in cash or stock, including SARs payable in cash or stock at the election of the registrant or a named executive officer.

(ii) The term *plan* includes, but is not limited to, the following: Any plan, contract, authorization or arrangement, whether or not set forth in any formal documents, pursuant to which the following may be received: cash, stock, restricted stock or restricted stock units, phantom stock, stock options, SARs, stock options in tandem with SARs, warrants, convertible securities, performance units and performance shares, and similar instruments. A plan may be applicable to one person. Registrants may omit information regarding group life, health, hospitalization, medical reimbursement or relocation plans that do not discriminate in scope, terms or operation, in

favor of executive officers or directors of the registrant and that are available generally to all salaried employees.

(iii) The term *long-term incentive plan* means any plan providing compensation intended to serve as incentive for performance to occur over a period longer than one fiscal year, whether such performance is measured by reference to financial performance of the registrant or an affiliate, the registrant's stock price, or any other measure, but excluding restricted stock, stock option and SAR plans.

(8) *Location of specified information.* The information required by paragraphs (i), (k) and (l) of this item need not be provided in any filings other than a registrant proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting). Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

(9) *Liability for specified information.* The information required by paragraphs (k) and (l) of this item shall not be deemed to be "soliciting material" or to be "filed" with the Commission or subject to Regulations 14A or 14C [17 CFR 240.14a-1 *et seq.* or 240.14c-1 *et seq.*], other than as provided in this item, or to the liabilities of section 18 of the Exchange Act [15 U.S.C. 78r], except to the extent that the registrant specifically requests that such information be treated as soliciting material or specifically incorporates it by reference into a filing under the Securities Act or the Exchange Act.

(b) *Summary Compensation Table.* (1) *General.* The information specified in paragraph (b)(2) of this item, concerning the compensation of the named executive officers for each of the registrant's last three completed fiscal years, shall be provided in a Summary Compensation Table, in the tabular format specified below.

SUMMARY COMPENSATION TABLE

| Name and principal position | Year | Annual compensation |            |                                | Long term compensation    |   |                              |                             |
|-----------------------------|------|---------------------|------------|--------------------------------|---------------------------|---|------------------------------|-----------------------------|
|                             |      | Salary (\$)         | Bonus (\$) | Other annual compensation (\$) | Awards                    |   | Payouts<br>LTIP payouts (\$) | All other compensation (\$) |
|                             |      |                     |            |                                | Restricted stock award(s) | Securities under-lying options/SARs (#) |                              |                             |
| (a)                         | (b)  | (c)                 | (d)        | (e)                            | (f)                       | (g)                                     | (h)                          | (i)                         |
| CEO .....                   | —    |                     |            |                                |                           |   |                              |                             |
|                             | —    |                     |            |                                |                           |   |                              |                             |
| A .....                     | —    |                     |            |                                |                           |   |                              |                             |
|                             | —    |                     |            |                                |                           |   |                              |                             |
| B .....                     | —    |                     |            |                                |                           |   |                              |                             |
|                             | —    |                     |            |                                |                           |   |                              |                             |
| C .....                     | —    |                     |            |                                |                           |   |                              |                             |
|                             | —    |                     |            |                                |                           |   |                              |                             |
| D .....                     | —    |                     |            |                                |                           |   |                              |                             |
|                             | —    |                     |            |                                |                           |   |                              |                             |
|                             | —    |                     |            |                                |                           |   |                              |                             |

- (2) The Table shall include:
- (i) The name and principal position of the executive officer (column (a));
  - (ii) Fiscal year covered (column (b));
  - (iii) Annual compensation (columns (c), (d) and (e)), including:
    - (A) The dollar value of base salary (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (c));
    - (B) The dollar value of bonus (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (d)); and

*Instructions to Item 402(b)(2)(iii) (A) and (B):* 1. Amounts deferred at the election of a named executive officer, whether pursuant to a plan established under Section 401(k) of the Internal Revenue Code [26 U.S.C. 401(k)], or otherwise, shall be included in the salary column (column (c)) or bonus column (column (d)), as appropriate, for the fiscal year in which earned. If the amount of salary or bonus earned in a given fiscal year is not calculable through the latest practicable date, that fact must be disclosed in a footnote and such amount must be disclosed in the subsequent fiscal year in the appropriate column for the fiscal year in which earned.

2. For stock or any other form of non-cash compensation, disclose the fair market value at the time the compensation is awarded, earned or paid.

3. Registrants need not include in the salary column (column (c)) or bonus column (column (d)) any amount of salary or bonus forgone at the election of a named executive

officer pursuant to a registrant program under which stock, stock-based or other forms of non-cash compensation may be received by a named executive in lieu of a portion of annual compensation earned in a covered fiscal year. However, the receipt of any such form of non-cash compensation in lieu of salary or bonus earned for a covered fiscal year must be disclosed in the appropriate column of the Table corresponding to that fiscal year (i.e., restricted stock awards (column (f)); options or SARs (column (g)); all other compensation (column (i)), or, if made pursuant to a long-term incentive plan and therefore not reportable at grant in the Summary Compensation Table, a footnote must be added to the salary or bonus column so disclosing and referring to the Long-Term Incentive Plan Table (required by paragraph (e) of this item) where the award is reported.

(C) The dollar value of other annual compensation not properly categorized as salary or bonus, as follows (column (e)):

(1) Perquisites and other personal benefits, securities or property, unless the aggregate amount of such compensation is the lesser of either \$50,000 or 10% of the total of annual salary and bonus reported for the named executive officer in columns (c) and (d);

(2) Above-market or preferential earnings on restricted stock, options, SARs or deferred compensation paid during the fiscal year or payable during that period but deferred at the election of the named executive officer;

(3) Earnings on long-term incentive plan compensation paid during the fiscal year or payable during that period but deferred at the election of the named executive officer;

(4) Amounts reimbursed during the fiscal year for the payment of taxes; and

(5) The dollar value of the difference between the price paid by a named executive officer for any security of the registrant or its subsidiaries purchased from the registrant or its subsidiaries (through deferral of salary or bonus, or otherwise), and the fair market value of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the registrant.

*Instructions to Item 402(b)(2)(iii)(C):* 1. Each perquisite or other personal benefit exceeding 25% of the total perquisites and other personal benefits reported for a named executive officer must be identified by type and amount in a footnote or accompanying narrative discussion to column (e).

2. Perquisites and other personal benefits shall be valued on the basis of the aggregate incremental cost to the registrant and its subsidiaries.

3. Interest on deferred or long-term compensation is above-market only if the rate of interest exceeds 120% of the applicable federal long-term rate, with compounding (as prescribed under section 1274(d) of the Internal Revenue Code, [26 U.S.C. 1274(d)]) at the rate that corresponds most closely to the rate under the registrant's plan at the time the interest rate or formula is set. In the event of a discretionary reset of the interest rate, the requisite calculation must be made on the basis of the interest rate at the time of such reset, rather than when originally established. Only the above-market portion of the interest must be included. If the applicable interest rates vary depending upon conditions such as a minimum period of continued service, the reported amount should be calculated assuming satisfaction of all conditions to receiving interest at the highest rate.

4. Dividends (and dividend equivalents) on restricted stock, options, SARs or deferred compensation denominated in stock ("deferred stock") are preferential only if earned at a rate higher than dividends on the registrant's common stock. Only the preferential portion of the dividends or equivalents must be included.

(iv) Long-term compensation (columns (f), (g) and (h)), including:

(A) The dollar value (net of any consideration paid by the named executive officer) of any award of restricted stock, including share units (calculated by multiplying the closing market price of the registrant's unrestricted stock on the date of grant by the number of shares awarded) (column (f));

(B) The sum of the number of securities underlying stock options granted (including options that subsequently have been transferred), with or without tandem SARs, and the number of freestanding SARs (column (g)); and

(C) The dollar value of all payouts pursuant to long-term incentive plans ("LTIPs") as defined in paragraph (a)(7)(iii) of this item (column (h)).

*Instructions to Item 402(b)(2)(iv):* 1. Awards of restricted stock that are subject to performance-based conditions on vesting, in addition to lapse of time and/or continued service with the registrant or a subsidiary, may be reported as LTIP awards pursuant to paragraph (e) of this item instead of in column (f). If this approach is selected, once the restricted stock vests, it must be reported as an LTIP payout in column (h).

2. The registrant shall, in a footnote to the Summary Compensation Table (appended to column (f), if included), disclose:

a. The number and value of the aggregate restricted stock holdings at the end of the last completed fiscal year. The value shall be calculated in the manner specified in paragraph (b)(2)(iv)(A) of this item using the value of the registrant's shares at the end of the last completed fiscal year;

b. For any restricted stock award reported in the Summary Compensation Table that will vest, in whole or in part, in under three years from the date of grant, the total number of shares awarded and the vesting schedule; and

c. Whether dividends will be paid on the restricted stock reported in column (f).

3. If at any time during the last completed fiscal year, the registrant has adjusted or amended the exercise price of stock options or freestanding SARs previously awarded to a named executive officer, whether through amendment, cancellation or replacement grants, or any other means ("repriced"), the registrant shall include the number of options or freestanding SARs so repriced as Stock Options/SARs granted and required to be reported in column (g).

4. If any specified performance target, goal or condition to payout was waived with respect to any amount included in LTIP payouts reported in column (h), the registrant shall so state in a footnote to column (h).

(v) All other compensation for the covered fiscal year that the registrant could not properly report in any other column of the Summary Compensation Table (column (i)). Any compensation reported in this column for the last completed fiscal year shall be identified and quantified in a footnote. Such compensation shall include, but not be limited to:

(A) The amount paid, payable or accrued to any named executive officer pursuant to a plan or arrangement in connection with:

(1) The resignation, retirement or any other termination of such executive officer's employment with the registrant and its subsidiaries; or

(2) A change in control of the registrant or a change in the executive officer's responsibilities following such a change in control;

(B) The dollar value of above-market or preferential amounts earned on restricted stock, options, SARs or deferred compensation during the fiscal year, or calculated with respect to that period, except that if such amounts are paid during the period, or payable during the period but deferred at the election of a named executive officer, this information shall be reported as Other Annual Compensation in column (e). See Instructions 3 and 4 to paragraph 402(b)(2)(iii)(C) of this item;

(C) The dollar value of amounts earned on long-term incentive plan compensation during the fiscal year, or calculated with respect to that period, except that if such amounts are paid during that period, or payable during that period at the election of the named executive officer, this information shall be reported as Other Annual Compensation in column (e);

(D) Annual registrant contributions or other allocations to vested and unvested defined contribution plans; and

(E) The dollar value of any insurance premiums paid by, or on behalf of, the registrant during the covered fiscal year with respect to term life insurance for the benefit of a named executive officer, and, if there is any arrangement or understanding, whether

formal or informal, that such executive officer has or will receive or be allocated an interest in any cash surrender value under the insurance policy, either:

(1) The full dollar value of the remainder of the premiums paid by, or on behalf of, the registrant; or

(2) If the premiums will be refunded to the registrant on termination of the policy, the dollar value of the benefit to the executive officer of the remainder of the premium paid by, or on behalf of, the registrant during the fiscal year. The benefit shall be determined for the period, projected on an actuarial basis, between payment of the premium and the refund.

*Instructions to Item 402(b)(2)(v):* 1. LTIP awards and amounts received on exercise of options and SARs need not be reported as All Other Compensation in column (i).

2. Information relating to defined benefit and actuarial plans should not be reported pursuant to paragraph (b) of this item, but instead should be reported pursuant to paragraph (f) of this item.

3. Where alternative methods of reporting are available under paragraph (b)(2)(v)(E) of this item, the same method should be used for each of the named executive officers. If the registrant chooses to change methods from one year to the next, that fact, and the reason therefor, should be disclosed in a footnote to column (i).

*Instruction to Item 402(b):* Information with respect to fiscal years prior to the last completed fiscal year will not be required if the registrant was not a reporting company pursuant to Section 13(a) or 15(d) of the Exchange Act at any time during that year, except that the registrant will be required to provide information for any such year if that information previously was required to be provided in response to a Commission filing requirement.

**(c) Option/SAR Grants Table.** (1) The information specified in paragraph (c)(2) of this item, concerning individual grants of stock options (whether or not in tandem with SARs) and free-standing SARs (including options and SARs that subsequently have been transferred) made during the last completed fiscal year to each of the named executive officers shall be provided in the tabular format specified as follows:

OPTION/SAR GRANTS IN LAST FISCAL YEAR

| Individual grants |  |   |                                |                 | Potential realizable value at assumed annual rates of stock price appreciation for option term |          | Alternative to (f) and (g): grant date value |
|-------------------|--|---|--------------------------------|-----------------|--|----------|--|
| Name              | Number of securities underlying options/SARs granted (#) | Percent of total options/SARs granted to employees in fiscal year | Exercise of base price (\$/Sh) | Expiration date | 5% (\$)  | 10% (\$) | Grant date present value \$                  |
| (a)               | (b)  | (c)   | (d)                            | (e)             | (f)  | (g)      | (f)  |
| CEO .....         |  |   |                                |                 |  |          |  |
| A .....           |  |   |                                |                 |  |          |  |
| B .....           |  |   |                                |                 |  |          |  |
| C .....           |  |   |                                |                 |  |          |  |
| D .....           |  |   |                                |                 |  |          |  |

(2) The Table shall include, with respect to each grant:

(i) The name of the executive officer (column (a));

(ii) Number of securities underlying option/SARs granted (column (b)).

(iii) The percent the grant represents of total options and SARs granted to employees during the fiscal year (column (c));

(iv) The per-share exercise or base price of the options or SARs granted (column (d)). If such exercise or base price is less than the market price of the underlying security on the date of grant, a separate, adjoining column shall be added showing market price on the date of grant;

(v) The expiration date of the options or SARs (column (e)); and

(vi) Either (A) the potential realizable value of each grant of options or freestanding SARs or (B) the present value of each grant, as follows:

(A) The potential realizable value of each grant of options or freestanding SARs, assuming that the market price of the underlying security appreciates in value from the date of grant to the end of the option or SAR term, at the following annualized rates:

(1) 5% (column (f));

(2) 10% (column (g)); and

(3) If the exercise or base price was below the market price of the underlying security at the date of grant, provide an additional column labeled 0%, to show the value at grant-date market price; or

(B) The present value of the grant at the date of grant, under any option pricing model (alternative column (f)).

*Instructions to Item 402(c):* 1. If more than one grant of options and/or freestanding SARs was made to a named executive officer during the last completed fiscal year, a separate line should be used to provide disclosure of each such grant. However, multiple grants during a single fiscal year may be aggregated where each grant was made at the same exercise and/or base price and has the same expiration date, and the same performance vesting thresholds, if any. A single grant consisting of options and/or freestanding SARs shall be reported as separate grants with respect to each tranche with a different exercise and/or base price, performance vesting threshold, or expiration date.

2. Options or freestanding SARs granted in connection with an option repricing transaction shall be reported in this table. See Instruction 3 to paragraph (b)(2)(iv) of this item.

3. Any material term of the grant, including but not limited to the date of exercisability, the number of SARs, performance units or other instruments granted in tandem with options, a performance-based condition to exercisability, a reload feature, or a tax-reimbursement feature, shall be footnoted.

4. If the exercise or base price is adjustable over the term of any option or freestanding SAR in accordance with any prescribed standard or formula, including but not limited to an index or premium price provision, describe the following, either by footnote to column (c) or in narrative accompanying the Table: (a) the standard or formula; and (b) any constant assumption made by the registrant regarding any adjustment to the exercise price in calculating the potential option or SAR value.

5. If any provision of a grant (other than an antidilution provision) could cause the exercise price to be lowered, registrants must clearly and fully disclose these provisions and their potential consequences either by a footnote or accompanying textual narrative.

6. In determining the grant-date market or base price of the security underlying options

§ 229.402

17 CFR Ch. II (4-1-01 Edition)

or freestanding SARs, the registrant may use either the closing market price per share of the security, or any other formula prescribed for the security.

7. The potential realizable dollar value of a grant (columns (f) and (g)) shall be the product of:

(a) The difference between:

(i) The product of the per-share market price at the time of the grant and the sum of 1 plus the adjusted stock price appreciation rate (the assumed rate of appreciation compounded annually over the term of the option or SAR); and

(ii) The per-share exercise price of the option or SAR; and

(b) The number of securities underlying the grant at fiscal year-end.

8. Registrants may add one or more separate columns using the formula prescribed in Instruction 7 to paragraph (c) of this item, to reflect the following:

a. The registrant's historic rate of appreciation over a period equivalent to the term of such options and/or SARs;

b. 0% appreciation, where the exercise or base price was equal to or greater than the market price of the underlying securities on the date of grant; and

c. N% appreciation, the percentage appreciation by which the exercise or base price exceeded the market price at grant. Where the grant included multiple tranches with exercise or base prices exceeding the market

price of the underlying security by varying degrees, include an additional column for each additional tranche.

9. Where the registrant chooses to use the grant-date valuation alternative specified in paragraph (c)(2)(vi)(B) of this item, the valuation shall be footnoted to describe the valuation method used. Where the registrant has used a variation of the Black-Scholes or binomial option pricing model, the description shall identify the use of such pricing model and describe the assumptions used relating to the expected volatility, risk-free rate of return, dividend yield and time of exercise. Any adjustments for non-transferability or risk of forfeiture also shall be disclosed. In the event another valuation method is used, the registrant is required to describe the methodology as well as any material assumptions.

(d) *Aggregated option/SAR exercises and fiscal year-end option/SAR value table.* (1) The information specified in paragraph (d)(2) of this item, concerning each exercise of stock options (or tandem SARs) and freestanding SARs during the last completed fiscal year by each of the named executive officers and the fiscal year-end value of unexercised options and SARs, shall be provided on an aggregated basis in the tabular format specified below:

AGGREGATED OPTION/SAR EXERCISES IN LAST FISCAL YEAR AND FY-END OPTION/SAR VALUES

| Name      | Shares acquired on exercise (#) | Value realized (\$) | Number of securities underlying unexercised options/SARs at FY-end (#)<br>Exercisable/Unexercisable | Value of unexercised in-the-money options/SARs at FY-end (\$)<br>Exercisable/Unexercisable |
|-----------|---------------------------------|---------------------|---|--|
| (a)       | (b)                             | (c)                 | (d)   | (e)  |
| CEO ..... |                                 |                     |   |  |
| A .....   |                                 |                     |   |  |
| B .....   |                                 |                     |   |  |
| C .....   |                                 |                     |   |  |
| D .....   |                                 |                     |   |  |

(2) The table shall include:

(i) The name of the executive officer (column (a));

(ii) The number of shares received upon exercise, or, if no shares were received, the number of securities with respect to which the options or SARs were exercised (column (b));

(iii) The aggregate dollar value realized upon exercise (column (c));

(iv) The total number of securities underlying unexercised options and SARs held at the end of the last completed fiscal year, separately identifying

the exercisable and unexercisable options and SARs (column (d)); and

(v) The aggregate dollar value of in-the-money, unexercised options and SARs held at the end of the fiscal year, separately identifying the exercisable and unexercisable options and SARs (column (e)).

*Instructions to Item 402(d)(2):* 1. Options or freestanding SARs are in-the-money if the fair market value of the underlying securities exceeds the exercise or base price of the option or SAR. The dollar values in columns (c) and (e) are calculated by determining the difference between the fair market value of

**Securities and Exchange Commission**

**§ 229.402**

the securities underlying the options or SARs and the exercise or base price of the options or SARs at exercise or fiscal year-end, respectively.

2. In calculating the dollar value realized upon exercise (column (c)), the value of any related payment or other consideration provided (or to be provided) by the registrant to or on behalf of a named executive officer, whether in payment of the exercise price or related taxes, shall not be included. Payments by the registrant in reimbursement of tax obligations incurred by a named execu-

tive officer are required to be disclosed in accordance with paragraph (b)(2)(iii)(C)(4) of this item.

(e) *Long-Term Incentive Plan (“LTIP”) awards table.* (1) The information specified in paragraph (e)(2) of this item, regarding each award made to a named executive officer in the last completed fiscal year under any LTIP, shall be provided in the tabular format specified below:

**LONG-TERM INCENTIVE PLANS—AWARDS IN LAST FISCAL YEAR**

| Name<br>(a) | Number of shares, units or other rights (#)<br>(b) | Performance or other period until maturation or payout<br>(c) | Estimated future payouts under non-stock price-based plans |                         |                          |
|-------------|--|---|--|-------------------------|--------------------------|
|             |  |   | Threshold (\$ or #)<br>(d)                                 | Target (\$ or #)<br>(e) | Maximum (\$ or #)<br>(f) |
| CEO .....   |  |   |  |                         |                          |
| A .....     |  |   |  |                         |                          |
| B .....     |  |   |  |                         |                          |
| C .....     |  |   |  |                         |                          |
| D .....     |  |   |  |                         |                          |

(2) The Table shall include:

(i) The name of the executive officer (column (a));

(ii) The number of shares, units or other rights awarded under any LTIP, and, if applicable, the number of shares underlying any such unit or right (column (b));

(iii) The performance or other time period until payout or maturation of the award (column (c)); and

(iv) For plans not based on stock price, the dollar value of the estimated payout, the number of shares to be awarded as the payout or a range of estimated payouts denominated in dollars or number of shares under the award (threshold, target and maximum amount) (columns (d) through (f)).

*Instructions to Item 402(e):* 1. For purposes of this paragraph, the term “long-term incentive plan” or “LTIP” shall be defined in accordance with paragraph (a)(7)(iii) of this item.

2. Describe in a footnote or in narrative text accompanying this table the material terms of any award, including a general description of the formula or criteria to be applied in determining the amounts payable. Registrants are not required to disclose any factor, criterion or performance-related or other condition to payout or maturation of a particular award that involves confidential commercial or business information, disclosure of which would adversely affect the registrant’s competitive position.

3. Separate disclosure shall be provided in the Table for each award made to a named executive officer, accompanied by the information specified in Instruction 2 to this paragraph. If awards are made to a named executive officer during the fiscal year under more than one plan, identify the particular plan under which each such award was made.

4. For column (d), “threshold” refers to the minimum amount payable for a certain level of performance under the plan. For column (e), “target” refers to the amount payable if the specified performance target(s) are reached. For column (f), “maximum” refers to the maximum payout possible under the plan.

5. In column (e), registrants must provide a representative amount based on the previous fiscal year’s performance if the target award is not determinable.

6. A tandem grant of two instruments, only one of which is pursuant to a LTIP, need be reported only in the table applicable to the other instrument. For example, an option granted in tandem with a performance share would be reported only as an option grant, with the tandem feature noted.

(f) *Defined benefit or actuarial plan disclosure—(1) Pension plan table.* (i) For any defined benefit or actuarial plan under which benefits are determined primarily by final compensation (or average final compensation) and years of service, provide a separate Pension Plan Table showing estimated annual benefits payable upon retirement (including amounts attributable to any



§ 229.402

17 CFR Ch. II (4-1-01 Edition)

defined benefit supplementary or excess pension award plans) in specified compensation and years of service classifications in the format specified below.

| PENSION PLAN TABLE |                  |       |       |       |       |
|--------------------|------------------|-------|-------|-------|-------|
| Remuneration       | Years of service |       |       |       |       |
|                    | 15               | 20    | 25    | 30    | 35    |
| 125,000 .....      | .....            | ..... | ..... | ..... | ..... |
| 150,000 .....      | .....            | ..... | ..... | ..... | ..... |
| 175,000 .....      | .....            | ..... | ..... | ..... | ..... |
| 200,000 .....      | .....            | ..... | ..... | ..... | ..... |
| 225,000 .....      | .....            | ..... | ..... | ..... | ..... |
| 250,000 .....      | .....            | ..... | ..... | ..... | ..... |
| 300,000 .....      | .....            | ..... | ..... | ..... | ..... |
| 400,000 .....      | .....            | ..... | ..... | ..... | ..... |
| 450,000 .....      | .....            | ..... | ..... | ..... | ..... |
| 500,000 .....      | .....            | ..... | ..... | ..... | ..... |

(ii) Immediately following the Table, the registrant shall disclose:

(A) The compensation covered by the plan(s), including the relationship of such covered compensation to the annual compensation reported in the Summary Compensation Table required by paragraph (b)(2)(iii) of this item, and state the current compensation covered by the plan for any named executive officer whose covered compensation differs substantially (by more than 10%) from that set forth in the annual compensation columns of the Summary Compensation Table;

(B) The estimated credited years of service for each of the named executive officers; and

(C) A statement as to the basis upon which benefits are computed (e.g., straight-life annuity amounts), and whether or not the benefits listed in the Pension Plan Table are subject to any deduction for Social Security or other offset amounts.

(2) *Alternative pension plan disclosure.* For any defined benefit or actuarial plan under which benefits are not determined primarily by final compensation (or average final compensation) and years of service, the registrant shall state in narrative form:

(i) The formula by which benefits are determined; and

(ii) The estimated annual benefits payable upon retirement at normal retirement age for each of the named executive officers.

*Instructions to Item 402(f):* 1. *Pension Levels.* Compensation set forth in the Pension Plan

Table pursuant to paragraph (f)(1)(i) of this item shall allow for reasonable increases in existing compensation levels; alternatively, registrants may present as the highest compensation level in the Pension Plan Table an amount equal to 120% of the amount of covered compensation of the most highly compensated individual named in the Summary Compensation Table required by paragraph (b)(2) of this item.

2. *Normal Retirement Age.* The term “normal retirement age” means normal retirement age as defined in a pension or similar plan or, if not defined therein, the earliest time at which a participant may retire without any benefit reduction due to age.

(g) *Compensation of Directors—(1) Standard arrangements.* Describe any standard arrangements, stating amounts, pursuant to which directors of the registrant are compensated for any services provided as a director, including any additional amounts payable for committee participation or special assignments.

(2) *Other arrangements.* Describe any other arrangements pursuant to which any director of the registrant was compensated during the registrant’s last completed fiscal year for any service provided as a director, stating the amount paid and the name of the director.

*Instruction to Item 402(g)(2):* The information required by paragraph (g)(2) of this item shall include any arrangement, including consulting contracts, entered into in consideration of the director’s service on the board. The material terms of any such arrangement shall be included.

(h) *Employment contracts and termination of employment and change-in-control arrangements.* Describe the terms and conditions of each of the following contracts or arrangements:

(1) Any employment contract between the registrant and a named executive officer; and

(2) Any compensatory plan or arrangement, including payments to be received from the registrant, with respect to a named executive officer, if such plan or arrangement results or will result from the resignation, retirement or any other termination of such executive officer’s employment with the registrant and its subsidiaries or

**Securities and Exchange Commission**

**§ 229.402**

from a change-in-control of the registrant or a change in the named executive officer's responsibilities following a change-in-control and the amount involved, including all periodic payments or installments, exceeds \$100,000.

(i) *Report on repricing of options/SARs.* (1) If at any time during the last completed fiscal year, the registrant, while a reporting company pursuant to section 13(a) or 15(d) of the Exchange Act [15 U.S.C. 78m(a), 78o(d)], has adjusted or amended the exercise price of stock options or SARs previously awarded to any of the named executive officers, whether through amendment, cancellation or replacement grants, or any other means ("repriced"), the registrant shall provide the information

specified in paragraphs (i)(2) and (i)(3) of this item.

(2) The compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) shall explain in reasonable detail any such repricing of options and/or SARs held by a named executive officer in the last completed fiscal year, as well as the basis for each such repricing.

(3)(i) The information specified in paragraph (i)(3)(ii) of this item, concerning all such repricings of options and SARs held by any executive officer during the last ten completed fiscal years, shall be provided in the tabular format specified below:

TEN-YEAR OPTION/SAR REPRICINGS

| Name | Date | Number of securities underlying options/SARs repriced or amended (#) | Market price of stock at time of repricing or amendment (\$) | Exercise price at time of repricing or amendment (\$) | New exercise price (\$) | Length of original option term remaining at date of repricing or amendment |
|------|------|--|--|---|-------------------------|--|
| (a)  | (b)  | (c)  | (d)  | (e)   | (f)                     | (g)  |
|      |      |  |  |   |                         |  |

(ii) The Table shall include, with respect to each repricing:

- (A) The name and position of the executive officer (column (a));
- (B) The date of each repricing (column (b));
- (C) The number of securities underlying replacement or amended options or SARs (column (c));
- (D) The per-share market price of the underlying security at the time of repricing (column (d));
- (E) The original exercise price or base price of the cancelled or amended option or SAR (column (e));
- (F) The per-share exercise price or base price of the replacement option or SAR (column (f)); and
- (G) The amount of time remaining before the replaced or amended option or SAR would have expired (column (g)).

*Instructions to Item 402(i):* 1. The required report shall be made over the name of each member of the registrant's compensation committee, or other board committee performing equivalent functions or, in the ab-

sence of any such committee, the entire board of directors.

2. A replacement grant is any grant of options or SARs reasonably related to any prior or potential option or SAR cancellation, whether by an exchange of existing options or SARs for options or SARs with new terms; the grant of new options or SARs in tandem with previously granted options or SARs that will operate to cancel the previously granted options or SARs upon exercise; repricing of previously granted options or SARs; or otherwise. If a corresponding original grant was canceled in a prior year, information about such grant nevertheless must be disclosed pursuant to this paragraph.

3. If the replacement grant is not made at the current market price, describe the terms of the grant in a footnote or accompanying textual narrative.

4. This paragraph shall not apply to any repricing occurring through the operation of:

- a. A plan formula or mechanism that results in the periodic adjustment of the option or SAR exercise or base price;
- b. A plan antidilution provision; or
- c. A recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs.

5. Information required by paragraph (i)(3) of this item shall not be provided for any repricings effected before the registrant became a reporting company pursuant to section 13(a) or 15(d) of the Exchange Act.

(j) *Additional information with respect to Compensation Committee Interlocks and Insider Participation in compensation decisions.* Under the caption “Compensation Committee Interlocks and Insider Participation,”

(1) The registrant shall identify each person who served as a member of the compensation committee of the registrant’s board of directors (or board committee performing equivalent functions) during the last completed fiscal year, indicating each committee member who:

(i) Was, during the fiscal year, an officer or employee of the registrant or any of its subsidiaries;

(ii) Was formerly an officer of the registrant or any of its subsidiaries; or

(iii) Had any relationship requiring disclosure by the registrant under any paragraph of Item 404 of Regulation S-K (§ 229.404). In this event, the disclosure required by Item 404 shall accompany such identification.

(2) If the registrant has no compensation committee (or other board committee performing equivalent functions), the registrant shall identify each officer and employee of the registrant or any of its subsidiaries, and any former officer of the registrant or any of its subsidiaries, who, during the last completed fiscal year, participated in deliberations of the registrant’s board of directors concerning executive officer compensation.

(3) The registrant shall describe any of the following relationships that existed during the last completed fiscal year:

(i) An executive officer of the registrant served as a member of the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of another entity, one of whose executive officers served on the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of the registrant;

(ii) An executive officer of the registrant served as a director of another entity, one of whose executive officers served on the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of the registrant; and

(iii) An executive officer of the registrant served as a member of the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of another entity, one of whose executive officers served as a director of the registrant.

(4) Disclosure required under paragraph (j)(3) of this item regarding any compensation committee member or other director of the registrant who also served as an executive officer of another entity shall be accompanied by the disclosure called for by Item 404 (§ 229.404) with respect to that person.

*Instruction to Item 402(j):* For purposes of this paragraph, the term “entity” shall not include an entity exempt from tax under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)].

(k) *Board compensation committee report on executive compensation.* (1) Disclosure of the compensation committee’s compensation policies applicable to the registrant’s executive officers (including the named executive officers), including the specific relationship of corporate performance to executive compensation, is required with respect to compensation reported for the last completed fiscal year.

(2) Discussion is required of the compensation committee’s bases for the CEO’s compensation reported for the last completed fiscal year, including the factors and criteria upon which the CEO’s compensation was based. The committee shall include a specific discussion of the relationship of the registrant’s performance to the CEO’s compensation for the last completed fiscal year, describing each measure of the registrant’s performance, whether qualitative or quantitative, on which the CEO’s compensation was based.

(3) The required disclosure shall be made over the name of each member of

the registrant's compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, entire board of directors). If the board of directors modified or rejected in any material way any action or recommendation by such committee with respect to such decisions in the last completed fiscal year, the disclosure must so indicate and explain the reasons for the board's actions, and be made over the names of all members of the board.

*Instructions to Item 402(k):* 1. Boilerplate language should be avoided in describing factors and criteria underlying awards or payments of executive compensation in the statement required.

2. Registrants are not required to disclose target levels with respect to specific quantitative or qualitative performance-related factors considered by the committee (or board), or any factors or criteria involving confidential commercial or business information, the disclosure of which would have an adverse effect on the registrant.

(1) Performance graph. (1) Provide a line graph comparing the yearly percentage change in the registrant's cumulative total shareholder return on a class of common stock registered under section 12 of the Exchange Act (as measured by dividing (i) the sum of (A) the cumulative amount of dividends for the measurement period, assuming dividend reinvestment, and (B) the difference between the registrant's share price at the end and the beginning of the measurement period; by (ii) the share price at the beginning of the measurement period) with

(i) the cumulative total return of a broad equity market index assuming reinvestment of dividends, that includes companies whose equity securities are traded on the same exchange or NASDAQ market or are of comparable market capitalization; *Provided, however,* That if the registrant is a company within the Standard & Poor's 500 Stock Index, the registrant must use that index; and

(ii) The cumulative total return, assuming reinvestment of dividends, of:

(A) A published industry or line-of-business index;

(B) Peer issuer(s) selected in good faith. If the registrant does not select its peer issuer(s) on an industry or line-

of-business basis, the registrant shall disclose the basis for its selection; or

(C) Issuer(s) with similar market capitalization(s), but only if the registrant does not use a published industry or line-of-business index and does not believe it can reasonably identify a peer group. If the registrant uses this alternative, the graph shall be accompanied by a statement of the reasons for this selection.

(2) For purposes of paragraph (1)(1) of this item, the term "measurement period" shall be the period beginning at the "measurement point" established by the market close on the last trading day before the beginning of the registrant's fifth preceding fiscal year, through and including the end of the registrant's last completed fiscal year. If the class of securities has been registered under section 12 of the Exchange Act for a shorter period of time, the period covered by the comparison may correspond to that time period.

(3) For purposes of paragraph (1)(1)(ii)(A) of this item, the term "published industry or line-of-business index" means any index that is prepared by a party other than the registrant or an affiliate and is accessible to the registrant's security holders; provided, however, that registrants may use an index prepared by the registrant or affiliate if such index is widely recognized and used.

(4) If the registrant selects a different index from an index used for the immediately preceding fiscal year, explain the reason(s) for this change and also compare the registrant's total return with that of both the newly selected index and the index used in the immediately preceding fiscal year.

*Instructions to Item 402(l):* 1. In preparing the required graphic comparisons, the registrant should:

a. Use, to the extent feasible, comparable methods of presentation and assumptions for the total return calculations required by paragraph (1)(1) of this item; *Provided, however,* That if the registrant constructs its own peer group index under paragraph (1)(1)(ii)(B), the same methodology must be used in calculating both the registrant's total return and that on the peer group index; and

b. Assume the reinvestment of dividends into additional shares of the same class of equity securities at the frequency with

**§ 229.403**

**17 CFR Ch. II (4-1-01 Edition)**

which dividends are paid on such securities during the applicable fiscal year.

2. In constructing the graph:

(a) The closing price at the measurement point must be converted into a fixed investment, stated in dollars, in the registrant's stock (or in the stocks represented by a given index), with cumulative returns for each subsequent fiscal year measured as a change from that investment; and

(b) Each fiscal year should be plotted with points showing the cumulative total return as of that point. The value of the investment as of each point plotted on a given return line is the number of shares held at that point multiplied by the then-prevailing share price.

3. The registrant is required to present information for the registrant's last five fiscal years, and may choose to graph a longer period; but the measurement point, however, shall remain the same.

4. Registrants may include comparisons using performance measures in addition to total return, such as return on average common shareholders' equity, so long as the registrant's compensation committee (or other board committee performing equivalent functions or in the absence of any such committee, the entire board of directors) describes the link between that measure and the level of executive compensation in the statement required by paragraph (k) of this Item.

5. If the registrant uses a peer issuer(s) comparison or comparison with issuer(s) with similar market capitalizations, the identity of those issuers must be disclosed and the returns of each component issuer of the group must be weighted according to the respective issuer's stock market capitalization at the beginning of each period for which a return is indicated.

[57 FR 48150, Oct. 21, 1992, as amended at 57 FR 53985, Nov. 16, 1992; 58 FR 63013, Nov. 29, 1993; 64 FR 11115, Mar. 8, 1999; 64 FR 53909, Oct. 5, 1999]

**§ 229.403 (Item 403) Security ownership of certain beneficial owners and management.**

(a) *Security ownership of certain beneficial owners.* Furnish the following information, as of the most recent practicable date, substantially in the tabular form indicated, with respect to any person (including any "group" as that term is used in section 13(d)(3) of the Exchange Act) who is known to the registrant to be the beneficial owner of more than five percent of any class of the registrant's voting securities. The address given in column (2) may be a business, mailing or residence address.

Show in column (3) the total number of shares beneficially owned and in column (4) the percentage of class so owned. Of the number of shares shown in column (3), indicate by footnote or otherwise the amount known to be shares with respect to which such listed beneficial owner has the right to acquire beneficial ownership, as specified in Rule 13d-3(d)(1) under the Exchange Act (§ 240.13d-3(d)(1) of this chapter).

| (1) Title of class | (2) Name and address of beneficial owner | (3) Amount and nature of beneficial ownership | (4) Percent of class |
|--------------------|--|---|----------------------|
|                    |  |   |                      |

(b) *Security ownership of management.* Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the registrant or any of its parents or subsidiaries other than directors' qualifying shares, beneficially owned by all directors and nominees, naming them, each of the named executive officers as defined in Item 402(a)(3) (§ 229.402(a)(3)), and directors and executive officers of the registrant as a group, without naming them. Show in column (3) the total number of shares beneficially owned and in column (4) the percent of class so owned. Of the number of shares shown in column (3), indicate, by footnote or otherwise, the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in § 240.13d-3(d)(1) of this chapter.

| (1) Title of class | (2) Name of beneficial owner | (3) Amount of nature of beneficial ownership | (4) Percent of class |
|--------------------|------------------------------|--|----------------------|
|                    |                              |  |                      |

(c) *Changes in control.* Describe any arrangements, known to the registrant, including any pledge by any person of securities of the registrant or any of its parents, the operation of which may at a subsequent date result in a change in control of the registrant.

*Instructions to Item 403:* 1. The percentages are to be calculated on the basis of the amount of outstanding securities, excluding securities held by or for the account of the registrant or its subsidiaries, plus securities deemed outstanding pursuant to Rule 13d-