

§229.101 (Item 101) Description of business.

(a) *General development of business.* Describe the general development of the business of the registrant, its subsidiaries, and any predecessor(s) ~~during the past five years, or such shorter period as the registrant may have been engaged in business. Information shall be disclosed for earlier periods if material to an understanding of the general development of the business.~~

(1) In describing developments, only information ~~shall be given as to matters such as material to an understanding of the general development of the business is required. Disclosure may include, but should not be limited to,~~ the following topics: ~~the year in which the registrant was organized and its form of organization; the~~

(i) Any material changes to a previously disclosed business strategy;

(ii) The nature and ~~results~~ effects of any material bankruptcy, receivership, or any similar ~~proceedings~~ proceeding with respect to the registrant or any of its significant subsidiaries; ~~the~~

(iii) The nature and ~~results~~ effects of any ~~other~~ material reclassification, merger or consolidation of the registrant or any of its significant subsidiaries; ~~the~~ and

(iv) The acquisition or disposition of any material amount of assets otherwise than in the ordinary course of business; ~~and any material changes in the mode~~

(2) Notwithstanding the provisions of §230.411(b) or §240.12b-23(a) of this chapter, as applicable, a registrant may only forgo providing a full discussion of the general development of its business for a filing other than an initial registration statement if it provides an update to the general development of its business, disclosing all of the material developments that have occurred since the most recent registration statement or report that includes a full discussion of ~~conducting~~ the general development of its business. In addition, the registrant must incorporate by reference, and include one active hyperlink to one registration statement or report that includes, the full discussion of the general development of the registrant's business.

(3) ~~(2)~~ Registrants:

(i) Filing a registration statement on Form S-1 (§239.11 of this chapter) under the Securities Act or on Form 10 (§249.210 of this chapter) under the Exchange Act;

(ii) Not subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act immediately before the filing of such registration statement; and

(iii) That (including predecessors) have not received revenue from operations during each of the three fiscal years immediately before the filing of such registration statement, shall provide the following information:

(A) If the registration statement is filed prior to the end of the registrant's second fiscal quarter, a description of the registrant's plan of operation for the remainder of the fiscal year; or

(B) If the registration statement is filed subsequent to the end of the registrant's second fiscal quarter, a description of the registrant's plan of operation for the remainder of the fiscal year and for the first six months of the next fiscal year. If such information is not available, the reasons for its not being available shall be stated. Disclosure relating to any plan shall include such matters as:

(1) In the case of a registration statement on Form S-1, a statement in narrative form indicating the registrant's opinion as to the period of time that the proceeds from the offering will satisfy cash requirements and whether in the next six months it will be necessary to raise additional funds to meet the expenditures required for operating the business of the registrant; the specific

reasons for such opinion shall be set forth and categories of expenditures and sources of cash resources shall be identified; however, amounts of expenditures and cash resources need not be provided; in addition, if the narrative statement is based on a cash budget, such budget shall be furnished to the Commission as supplemental information, but not as part of the registration statement;

(2) An explanation of material product research and development to be performed during the period covered in the plan;

(3) Any anticipated material acquisition of plant and equipment and the capacity thereof;

(4) Any anticipated material changes in number of employees in the various departments such as research and development, production, sales or administration; and

(5) Other material areas which may be peculiar to the registrant's business.

(b) [Reserved]

(c) ~~Narrative description~~ Description of business. (1) Describe the business done and intended to be done by the registrant and its subsidiaries, focusing upon the registrant's dominant segment or each reportable segment about which financial information is presented in the financial statements. ~~To the extent~~ When describing each segment, only information material to an understanding of the ~~registrant's~~ business taken as a whole, ~~the description of each such segment shall is required.~~ Disclosure may include, but should not be limited to, the information specified in paragraphs (c)(1) (i) through ~~(xv)~~ of this section. ~~The matters specified in paragraphs (c)(1) (xi) through (xiii) of this section shall be discussed with respect to the registrant's business in general; where material, the segments to which these matters are significant shall be identified.~~

~~(i) The principal products produced and services rendered by the registrant in the segment and the principal markets for, and methods of distribution of, the segment's principal products and services. In addition, state for each of the last three fiscal years the amount or percentage of total revenue contributed by any class of similar products or services which accounted for 10 percent or more of consolidated revenue in any of the last three fiscal years or 15 percent or more of consolidated revenue, if total revenue did not exceed \$50,000,000 during any of such fiscal years.~~ Revenue-generating activities, products and/or services, and any dependence on revenue-generating activities, key products, services, product families or customers, including governmental customers;

~~(ii) A description of the status of a product or segment (e.g. whether in the planning stage, whether prototypes exist, the degree to which product design has progressed or whether further engineering is necessary), if there has been a public announcement of, or if the registrant otherwise has made public information about, a new product or segment that would require the investment of a material amount of the assets of the registrant or that otherwise is material. This paragraph is not intended to require disclosure of otherwise nonpublic corporate information the disclosure of which would affect adversely the registrant's competitive position.~~ Status of development efforts for new or enhanced products, trends in market demand and competitive conditions;

(iii) Resources material to a registrant's business, such as:

(A) ~~(iii) The sources~~ Sources and availability of raw materials.

~~(iv) The importance to the segment;~~ and ~~the~~

(B) The duration and effect of all patents, trademarks, licenses, franchises, and concessions held;

~~(v) — The extent to which the business of the segment is or may be seasonal.~~

~~(vi) — The practices of the registrant and the industry (respective industries) relating to working capital items (e.g., where the registrant is required to carry significant amounts of inventory to meet rapid delivery requirements of customers or to assure itself of a continuous allotment of goods from suppliers; where the registrant provides rights to return merchandise; or where the registrant has provided extended payment terms to customers).~~

~~(vii) — The dependence of the segment upon a single customer, or a few customers, the loss of any one or more of which would have a material adverse effect on the segment. The name of any customer and its relationship, if any, with the registrant or its subsidiaries shall be disclosed if sales to the customer by one or more segments are made in an aggregate amount equal to 10 percent or more of the registrant's consolidated revenues and the loss of such customer would have a material adverse effect on the registrant and its subsidiaries taken as a whole. The names of other customers may be included, unless in the particular case the effect of including the names would be misleading. For purposes of this paragraph, a group of customers under common control or customers that are affiliates of each other shall be regarded as a single customer.~~

~~(viii) — The dollar amount of backlog orders believed to be firm, as of a recent date and as of a comparable date in the preceding fiscal year, together with an indication of the portion thereof not reasonably expected to be filled within the current fiscal year, and seasonal or other material aspects of the backlog. (There may be included as firm orders government orders that are firm but not yet funded and contracts awarded but not yet signed, provided an appropriate statement is added to explain the nature of such orders and the amount thereof. The portion of orders already included in sales or operating revenues on the basis of percentage of completion or program accounting shall be excluded.)~~

(iv) ~~(ix)~~ A description of any material portion of the business that may be subject to renegotiation of profits or termination of contracts or subcontracts at the election of the Government; and

~~(x) — Competitive conditions in the business involved including, where material, the identity of the particular markets in which the registrant competes, an estimate of the number of competitors and the registrant's competitive position, if known or reasonably available to the registrant. Separate consideration shall be given to the principal products or services or classes of products or services of the segment, if any. Generally, the names of competitors need not be disclosed. The registrant may include such names, unless in the particular case the effect of including the names would be misleading. Where, however, the registrant knows or has reason to know that one or a small number of competitors is dominant in the industry it shall be identified. The principal methods of competition (e.g., price, service, warranty or product performance) shall be identified, and positive and negative factors pertaining to the competitive position of the registrant, to the extent that they exist, shall be explained if known or reasonably available to the registrant.~~

~~(xi) — [Reserved]~~

(v) The extent to which the business is or may be seasonal.

(2) Discuss the information specified in paragraphs (c)(2)(i) and (ii) of this section with respect to, and to the extent material to an understanding of, the registrant's business taken as a

whole, except that, if the information is material to a particular segment, you should additionally identify that segment.

(i) ~~(xii) Appropriate disclosure also shall be made as to the~~ The material effects that compliance with ~~Federal, State and local provisions which have been enacted or adopted regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment~~ government regulations, including environmental regulations, may have upon the capital expenditures, earnings and competitive position of the registrant and its subsidiaries. ~~The registrant shall disclose any material, including the~~ estimated capital expenditures for environmental control facilities for the ~~remainder of its~~ current fiscal year and ~~its succeeding fiscal year and for such further periods as~~ any other material subsequent period; and

(ii) A description of the registrant ~~may deem materials.~~

~~(xiii)~~ The's human capital resources, including the number of persons employed by the registrant, and any human capital measures or objectives that the registrant focuses on in managing the business (such as, depending on the nature of the registrant's business and workforce, measures or objectives that address the development, attraction and retention of personnel).

(d) [Reserved]

(e) *Available information.* Disclose the information in paragraphs (e)(1), (e)(2) and (e)(3) of this section in any registration statement you file under the Securities Act (15 U.S.C. 77a *et seq.*), and disclose the information in paragraph (e)(3) of this section in your annual report on Form 10-K (§249.310 of this chapter). Further disclose the information in paragraph (e)(4) of this section if you are an accelerated filer or a large accelerated filer (as defined in §240.12b-2 of this chapter) filing an annual report on Form 10-K (§249.310 of this chapter):

(1) Whether you file reports with the Securities and Exchange Commission. If you are a reporting company, identify the reports and other information you file with the SEC.

(2) State that the SEC maintains an internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (<http://www.sec.gov>).

(3) Disclose your internet address, if you have one.

(4)(i) Whether you make available free of charge on or through your Internet website, if you have one, your annual report on Form 10-K, quarterly reports on Form 10-Q (§249.308a of this chapter), current reports on Form 8-K (§249.308 of this chapter), and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) as soon as reasonably practicable after you electronically file such material with, or furnish it to, the SEC;

(ii) If you do not make your filings available in this manner, the reasons you do not do so (including, where applicable, that you do not have an Internet website); and

(iii) If you do not make your filings available in this manner, whether you voluntarily will provide electronic or paper copies of your filings free of charge upon request.

(f) *Reports to security holders.* Disclose the following information in any registration statement you file under the Securities Act:

(1) If the SEC's proxy rules or regulations, or stock exchange requirements, do not require you to send an annual report to security holders or to holders of American depository receipts, describe briefly the nature and frequency of reports that you will give to security holders.

Specify whether the reports that you give will contain financial information that has been examined and reported on, with an opinion expressed “by” an independent public or certified public accountant.

(2) For a foreign private issuer, if the report will not contain financial information prepared in accordance with U.S. generally accepted accounting principles, you must state whether the report will include a reconciliation of this information with U.S. generally accepted accounting principles.

(g) *Enforceability of civil liabilities against foreign persons.* Disclose the following if you are a foreign private issuer filing a registration statement under the Securities Act:

(1) Whether or not investors may bring actions under the civil liability provisions of the U.S. Federal securities laws against the foreign private issuer, any of its officers and directors who are residents of a foreign country, any underwriters or experts named in the registration statement that are residents of a foreign country, and whether investors may enforce these civil liability provisions when the assets of the issuer or these other persons are located outside of the United States. The disclosure must address the following matters:

(i) The investor's ability to effect service of process within the United States on the foreign private issuer or any person;

(ii) The investor's ability to enforce judgments obtained in U.S. courts against foreign persons based upon the civil liability provisions of the U.S. Federal securities laws;

(iii) The investor's ability to enforce, in an appropriate foreign court, judgments of U.S. courts based upon the civil liability provisions of the U.S. Federal securities laws; and

(iv) The investor's ability to bring an original action in an appropriate foreign court to enforce liabilities against the foreign private issuer or any person based upon the U.S. Federal securities laws.

(2) If you provide this disclosure based on an opinion of counsel, name counsel in the prospectus and file as an exhibit to the registration statement a signed consent of counsel to the use of its name and opinion.

(h) *Smaller reporting companies.* A smaller reporting company, as defined by §229.10(f)(1), may satisfy its obligations under this Item by describing the development of its business ~~during the last three years pursuant to this paragraph (h).~~ In describing developments under paragraphs (h)(1) through (3), information should be provided for the period of time that is material to an understanding of the general development of the business. Notwithstanding the provisions of §230.411(b) or §240.12b-23(a) of this chapter as applicable, a smaller reporting company may only forgo providing a full discussion of the general development of its business for a filing other than an initial registration statement if it provides an update to the general development of its business disclosing all of the material developments that have occurred since the most recent registration statement or report that includes a full discussion of the general development of its business. In addition, the smaller reporting company must incorporate by reference, and include one active hyperlink to one registration statement or report that includes, the full discussion of the general development of the registrant's business. If the smaller reporting company has not been in business for three years, ~~give~~provide the same information for predecessor(s) of the smaller reporting company if there are any. This business development description should include: ~~(1)~~ (1) Form and year of organization;

(2) Any bankruptcy, receivership or similar proceeding; and

(3) Any material reclassification, merger, consolidation, or purchase or sale of a significant amount of assets not in the ordinary course of business.

(4) *Business of the smaller reporting company.* Briefly describe the business and include, to the extent material to an understanding of the smaller reporting company:

- (i) Principal products or services and their markets;
 - (ii) Distribution methods of the products or services;
 - (iii) Status of any publicly announced new product or service;
 - (iv) Competitive business conditions and the smaller reporting company's competitive position in the industry and methods of competition;
 - (v) Sources and availability of raw materials and the names of principal suppliers;
 - (vi) Dependence on one or a few major customers;
 - (vii) Patents, trademarks, licenses, franchises, concessions, royalty agreements or labor contracts, including duration;
 - (viii) Need for any government approval of principal products or services. If government approval is necessary and the smaller reporting company has not yet received that approval, discuss the status of the approval within the government approval process;
 - (ix) Effect of existing or probable governmental regulations on the business;
 - (x) [Reserved]
 - (xi) Costs and effects of compliance with environmental laws (federal, state and local);
- and
- (xii) Number of total employees and number of full-time employees.

(5) *Reports to security holders.* Disclose the following in any registration statement you file under the Securities Act of 1933:

- (i) If you are not required to deliver an annual report to security holders, whether you will voluntarily send an annual report and whether the report will include audited financial statements;
- (ii) Whether you file reports with the Securities and Exchange Commission. If you are a reporting company, identify the reports and other information you file with the Commission; and
- (iii) State that the Commission maintains an internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the Commission and state the address of that site (<http://www.sec.gov>). Disclose your internet address, if available.

(6) *Foreign issuers.* Provide the information required by Item 101(g) of Regulation S-K (§229.101(g)).

Instructions to Item 101: 1. In determining what information about the segments is material to an understanding of the registrant's business taken as a whole and therefore required to be disclosed, pursuant to paragraph (c) of this Item, the registrant should take into account both quantitative and qualitative factors such as the significance of the matter to the registrant (e.g., whether a matter with a relatively minor impact on the registrant's business is represented by management to be important to its future profitability), the pervasiveness of the matter (e.g., whether it affects or may affect numerous items in the segment information), and the impact of the matter (e.g., whether it distorts the trends reflected in the segment information). Situations may arise when information should be disclosed about a segment, although the information in quantitative terms may not appear significant to the registrant's business taken as a whole.

2. Base the determination of whether information about segments is required for a particular year upon an evaluation of interperiod comparability. For instance, interperiod comparability would require a registrant to report segment information in the current period even if not material under the criteria for reportability of FASB ASC Topic 280, *Segment Reporting*, if a segment has been

significant in the immediately preceding period and the registrant expects it to be significant in the future.

3. The Commission, upon written request of the registrant and where consistent with the protection of investors, may permit the omission of any of the information required by this Item or the furnishing in substitution thereof of appropriate information of comparable character.

[47 FR 11401, Mar. 16, 1982, as amended at 63 FR 6381, Feb. 6, 1998; 64 FR 1734, Jan. 12, 1999; 67 FR 58504, Sept. 16, 2002; 70 FR 76641, Dec. 27, 2005; 73 FR 957, Jan. 4, 2008; 76 FR 50120, Aug. 12, 2011; 83 FR 50209, Oct. 4, 2018]

§229.103 (Item 103) Legal proceedings.

(a) Describe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the registrant or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the ~~proceeding~~ proceedings and the relief sought. Include similar information as to any such proceedings known to be contemplated by governmental authorities. Information may be provided by hyperlink or cross-reference to legal proceedings disclosure elsewhere in the document, such as in Management's Discussion & Analysis (MD&A), Risk Factors and notes to the financial statements.

Instructions to Item 103: 1. If

(b) No information need be given under this section for proceedings:

(1) That involve negligence or other claims or actions if the business ordinarily results in such claims or actions ~~for negligence or other claims, no such, unless the claim or~~ action ~~or claim need be described unless it~~ departs from the normal kind of such claims or actions; ~~or~~

(2) ~~2. No information need be given with respect to any proceeding that involves~~ That involve primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same legal ~~and~~ or factual issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

(c) ~~3. Notwithstanding Instructions 1 and 2, any~~ paragraph (b) of this section, disclosure under this section shall include, but shall not be limited to:

(1) Any material bankruptcy, receivership, or similar proceeding with respect to the registrant or any of its significant subsidiaries ~~shall be described;~~

(2) ~~4.~~ Any material proceedings to which any director, officer or affiliate of the registrant, any owner of record or beneficially of more than five percent of any class of voting securities of the registrant, or any associate of any such director, officer, affiliate of the registrant, or security holder is a party adverse to the registrant or any of its subsidiaries or has a material interest adverse to the registrant or any of its subsidiaries ~~also shall be described;~~

(3) ~~5. Notwithstanding the foregoing, an administrative~~ Administrative or judicial ~~proceeding~~ proceedings (including, ~~for purposes of A and B of this Instruction,~~ proceedings which present in large degree the same issues) arising under any Federal, State, or local provisions that have been enacted or adopted regulating the discharge of materials into the environment or ~~primary~~ primarily for the purpose of protecting the environment. Such proceedings shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if:

(i) ~~A.~~ Such proceeding is material to the business or financial condition of the registrant;

(ii) ~~B.~~ Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved,

exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or

(iii) ~~C.~~ A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$~~100,000~~300,000 or, at the election of the registrant, such other threshold that (A) the registrant determines is reasonably designed to result in disclosure of any such proceeding that is material to the business or financial condition is disclosed, (B) the registrant discloses (including any change thereto) in each annual and quarterly report, and (C) does not exceed the lesser of \$1 million or one percent of the current assets of the registrant and its subsidiaries on a consolidated basis; provided, however, that such proceedings ~~which~~that are similar in nature may be grouped and described generically.

§229.105 (Item 105) Risk factors.

(a) Where appropriate, provide under the caption “Risk Factors” a discussion of the ~~most significant~~material factors that make an investment in the registrant or offering speculative or risky. This discussion must be ~~concise and~~ organized logically. ~~Do not present with relevant headings and each risk factor should be set forth under a subcaption that adequately describes the risk. The presentation of risks that could apply generically to any registrant or any offering is discouraged, but to the extent generic risk factors are presented, disclose them at the end of the risk factor section under the caption “General Risk Factors. Explain”~~

(b) Concisely explain how ~~the each~~ risk affects the registrant or the securities being offered. ~~Set forth each risk factor under a subcaption that adequately describes the risk~~If the discussion is longer than 15 pages, include in the forepart of the prospectus or annual report, as applicable, a series of concise, bulleted or numbered statements that is no more than two pages summarizing the principal factors that make an investment in the registrant or offering speculative or risky. If the risk factor discussion is included in a registration statement, it must immediately follow the summary section required by §229.503 (Item 503 of Regulation S-K). If you do not include a summary section, the risk factor section must immediately follow the cover page of the prospectus or the pricing information section that immediately follows the cover page. Pricing information means price and price-related information that you may omit from the prospectus in an effective registration statement based on Rule 430A (§230.430A~~(a)~~) of this chapter). The registrant must furnish this information in plain English. See §230.421(d) of Regulation C of this chapter.

~~[84 FR 12716, Apr. 2, 2019]~~

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Total changes	204
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