A Practical Look at Section 382

Tax Executives Institute
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Agenda

A. Determination of an Ownership Change
B. Section 382 Limitation
C. Determination of Built-in Gains and Losses
D. Bankruptcy Issues
E. Consolidated Return Issues
   A. New Members
   B. Departing Members
F. Information Statement
Agenda

A. Determination of an Ownership Change

B. Section 382 Limitation

C. Determination of Built-in Gains and Losses

D. Bankruptcy Issues

E. Consolidated Return Issues
   A. New Members
   B. Departing Members

F. Information Statement
Overview of Section 382

Purpose of Section 382:

- Enacted to prevent “trafficking” in NOLs
- Limits ability of a corporation to offset income using NOLs generated prior to a “change in ownership”
Why Section 382 Matters

• Purchase price modeling should account for limits on NOLs
• Equity transactions should be monitored to make sure changes in equity holdings do not inadvertently trip Section 382
• Cumulative annual limitation is typically much less than the NOL carryforwards
  – Might need to write down DTA because of permanent disallowance
Section 382 Basics

• Limits a “loss corporation”
• That undergoes an “ownership change”
  – An ownership change occurs if immediately after an owner shift or an equity structure shift - The percentage by value of stock of the loss corporation owned by one or more 5-percent shareholders has increased by more than 50 percentage points over the lowest percentage ownership of such shareholders
• During a 3-year “testing period”
• From utilizing “pre-change losses” or other tax attributes
• Against “post-change” income
Section 382

- Loss Corporation
  - NOL, tax credit, capital loss, or other attribute carryforward
  - Net Unrealized Built-In Loss (“NUBIL”)
- Testing period
  - Begins on the first day of the tax year when carryforward begins
  - 3-year “rolling” period unless change occurs
Steps to Calculate Owner Shifts

On Each Testing Date:
• Determine stock interests on each testing date
• Assign FMV to equity
• Compute total value on the testing date and determine 5% threshold
• Evaluate owners of 5% or more including attribution
• Apply rules for transaction on each testing date and over testing period (include segregation and aggregation rules)
• Determine testing date ownership percentage for each 5-percent shareholder based on value and compare that 5-percent shareholder’s lowest ownership percentage based on value during the testing period
• Add only the positive owner shifts calculated in previous bullet on testing date to determine aggregate owner shift for this testing date
• If cumulative owner shift is greater than 50 percentage points on the testing date, an ownership change has occurred
# Testing Date Timeline

<table>
<thead>
<tr>
<th>Date</th>
<th>Equity Event</th>
<th>Type of Equity</th>
<th># of Shares</th>
<th>Info Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/1/03</td>
<td>Initial Capitalization</td>
<td>Common</td>
<td>1,000</td>
<td>Audited Financials</td>
</tr>
<tr>
<td>3/1/03</td>
<td>Investor</td>
<td>Series A Preferred</td>
<td>100</td>
<td>Private Placement Memorandum</td>
</tr>
<tr>
<td>2/1/04</td>
<td>Public Offering and Preferred Conversion</td>
<td>Common</td>
<td>400</td>
<td>Audited Financials and Form S-1</td>
</tr>
<tr>
<td>12/31/04</td>
<td>Exercise of Stock Options</td>
<td>Common</td>
<td>20</td>
<td>Audited Financials and Option Plan</td>
</tr>
<tr>
<td>2/1/05</td>
<td>Acquisition by Investment Advisor</td>
<td>Common</td>
<td>90</td>
<td>Schedule 13G</td>
</tr>
<tr>
<td>3/1/05</td>
<td>Public Offering</td>
<td>Common</td>
<td>200</td>
<td>Audited Financials and Form S-1</td>
</tr>
<tr>
<td>4/1/05</td>
<td>Sale by Founder</td>
<td>Common</td>
<td>10</td>
<td>Schedule 13D</td>
</tr>
<tr>
<td>6/1/06</td>
<td>Sale by Founder</td>
<td>Common</td>
<td>300</td>
<td>Schedule 13D</td>
</tr>
</tbody>
</table>
On or about January 1, 2003 the Company issued 1,000 common shares

- On January 1, 2003 the Company issued 1,000 shares of Company common stock to Founder as part of the Company’s initial capitalization. The common stock was valued at $1.00 per share.
# Equity Rollforward: Initial Capitalization as of January 1, 2003

<table>
<thead>
<tr>
<th>5% S/Hs</th>
<th># of Common Shares</th>
<th># of A Pfd Shares</th>
<th>Initial Capital: Common</th>
<th>Value: Common</th>
<th>Value: A Pfd</th>
<th>Total Value</th>
<th>Testing Date %</th>
<th>Testing Period Low %</th>
<th>Shift in Owner %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Founder</td>
<td>0</td>
<td>0</td>
<td>1,000</td>
<td>$1.00</td>
<td>$0</td>
<td>$1,000</td>
<td>100%</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTALS</td>
<td>0</td>
<td>0</td>
<td>1,000</td>
<td>$1,000</td>
<td>100%</td>
<td>100%</td>
<td>0%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
What generally counts as “equity” when determining a Section 382 ownership change?

- Common voting stock
- Convertible preferred stock
- Voting preferred stock
Equity Under 382

What generally does NOT count as “equity” when determining a Section 382 ownership change?

• Plain vanilla preferred stock
  – Not entitled to vote
  – Not convertible
  – Limited and preferred as to dividends
  – Does not participate in corporate growth
  – Redemption and liquidation rights do not exceed issue price

• Most stock options

• Debt, including most convertible debt
  – Significant modifications – deemed equity?
Measuring Shifts

• The determination of the percentage of stock owned by a person shall be made on the basis of the relative fair market value of the stock owned by such person to the total fair market value of the corporation’s outstanding stock
Changes in Value

- Any change in proportionate ownership which is attributable **solely** to fluctuations in relative FMV of different classes of stock is not taken into account (Section 382(l)(3)(C))
  - Temporary Regulations reserve on the application
- Taxpayers can or must back out effects of fluctuations
  - No testing date if fluctuations, or
  - Ignore all fluctuations
Change in Value (cont’d)

At LossCo formation, A has 20% of FMV and B has 80% FMV
Year 1: LossCo has NOL
Year 2: LossCo overall value drops to $25: A still has 80% of FMV and B drops to 20% FMV
Year 2: B sells all LossCo stock to unrelated C for $5

Is the sale treated as an 80% shift (A increases from 20% to 80% (60% difference) + C 20%)? or
Is the sale treated as a 20% shift (C’s increase to 20%)?
Changes in Value (cont’d)

- Various PLRs – values remain constant
  - PLR 200411012, PLR 200511008, PLR 200520011, PLR 200622011, PLR 200901001, PLR 200901003

- Rulings “allow” taxpayers to apply the methodology in the rulings
  - Is this the required methodology?
  - Is the methodology elective depending upon the outcome?
  - Should you seek a PLR if you wish to rely on the methodology?

- Application of this analysis can become extremely complex and often cost prohibitive to taxpayers

- One alternative is use an “as if” converted methodology for preferred so that there is only the effect of a single class outstanding

- Look for future IRS guidance
On or about March 1, 2003 the Company issued 100 shares of Series A preferred stock:

- On March 1, 2003 the Company issued 100 shares of Series A preferred stock to Investor A in exchange for $200 (or $2.00 per share)
- This class of preferred stock is treated as stock for Section 382 purposes because it is convertible into common stock at a 2-to-1 ratio
- The value of $2.00 per share used for the Series A preferred stock on this testing date is based on the issuance price paid for such stock
- Based on an issue price of $2.00 per Series A preferred share (and holding the value of the common stock constant from the date of issuance at $1.00 per share) the cumulative owner shift as of March 1, 2003 was 16.7%
- Investor A is treated as a separate 5% shareholder on the issuance of the 100 shares of Series A preferred stock under the segregation rules of Reg. Section 1.382-2T(j)(2)(iii)(B)
## Equity Rollforward: Issuance of Series A Preferred as of March 1, 2003

<table>
<thead>
<tr>
<th>5% S/Hs</th>
<th># of Common Shares</th>
<th># of A Pfd Shares</th>
<th>Testing Date #1: New Pfd</th>
<th>Value: Common</th>
<th>Value: A Pfd</th>
<th>Total Value</th>
<th>Testing Date %</th>
<th>Testing Period Low %</th>
<th>Shift in Owner %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Founder</td>
<td>1,000</td>
<td>0</td>
<td></td>
<td>$1.00</td>
<td>$2.00</td>
<td>$1,000</td>
<td>83.3%</td>
<td>83.3%</td>
<td>0%</td>
</tr>
<tr>
<td>Investor A</td>
<td>0</td>
<td>0</td>
<td>100</td>
<td>$1.00</td>
<td>$2.00</td>
<td>$200</td>
<td>16.7%</td>
<td>0%</td>
<td>16.7%</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td><strong>1,000</strong></td>
<td>0</td>
<td><strong>100</strong></td>
<td><strong>$1,200</strong></td>
<td><strong>100%</strong></td>
<td><strong>$1,200</strong></td>
<td><strong>83.3%</strong></td>
<td></td>
<td><strong>16.7%</strong></td>
</tr>
</tbody>
</table>
What is a 5% Shareholder?

- Any individual who owns directly or indirectly an amount of the loss corporation stock that aggregates to a 5% ownership interest by value
- Include indirect 5% shareholders
  - Trying to get to “arms and legs”

A is indirect 5% shareholder of LossCo
- A sells 30% of X stock to C
- 24% shift in LossCo (30% multiplied by 80%) even though shareholder X still owns 80%
What is a 5% Shareholder? (cont’d)

• Review SEC information:
  – “Reliance” on the existence or absence of Schedules 13D & 13G
    • What about Schedule 13F for investment managers?
    • See Testing Date Schedule February 1, 2005
    • See Appendix A
  – “Actual knowledge”
  – Other helpful SEC information:
    • Forms 3 and 4
    • DEF 14A – Proxy Statement
    • 10Qs
    • 10Ks
• Investment advisors may not be considered 5% shareholders
  – PLRs distinguish between a person who has the right to the dividends and proceeds from the sale of a loss corporation’s stock (the “economic owner”) and the investment advisor, who holds the power to vote and/or dispose of such stock (the “reporting owner”)
    • Right to dividends
    • Right to proceeds upon the sale of stock
Investment Advisors (cont’d)

Group Schedule 13 filers into 4 categories:

1. Statement indicates filer is the beneficial holder of the stock, does not disclaim ownership and does not state they are investment advisors
   - Treated as 5% shareholder

2. Statement indicates filer is an investment advisor, but states that someone or some entity that the filer invests on behalf of or is reporting for is a 5% shareholder of the stock
   - The identified 5% shareholder is treated as a 5% shareholder

3. Statement indicates filer is an investment advisor and the filer specifically states that no one the filer is reporting on behalf of holds 5% of the stock
   - No 5% shareholder exists and stock is not tracked
4. Statement indicates the filer is an investment advisor, but either does not answer the question on whether or not anyone the filer is reporting on behalf of is deemed to beneficially own 5% of the stock or they answer “N/A”
   – Three choices:
     a) Make a direct inquiry of the filer and obtain the answer to the question
     b) Do additional research on the filer to determine if information can be obtained on the filer’s business, their investors, etc. sufficient to either exclude them or include them as a 5% shareholder
     c) Treat the filer as a 5% shareholder because the Schedule 13 is not clear
Coordinated Acquisition

- Two or more persons can be combined into a deemed “entity” for Section 382 purposes when the persons have a formal or informal understanding among themselves to make a “coordinated acquisition.”
- Two or more that are the economic owners of the stock in a loss corporation may join together to report their interests in a single Schedule 13 for SEC purposes.
- Doesn’t affirm the existence of a “Group” for SEC purposes
  - Look to Box 2
- Is it an entity for 382?
United States Shareholder

Notice 2008-84
• No testing date when United States acquires more than 50% of the stock of a loss corporation
• Foreign government bailouts? See comment letters

Notice 2009-14
• Treasury’s acquisition of stock of financial institutions under Capital Purchase Program and other Programs of Emergency Stabilization Act of 2008 generally not treated as outstanding for Section 382 purposes
• Stock meets requirements of Section 1504(a)(4)
Notice 2009-38

- Supersedes and amplifies Notice 2009-14, stock issued pursuant to Public CPP, Private CPP, S Corp CPP, TARP TIP, AGP, SSFIP, and AIFP is treated as 1504(a)(4) stock
- Also, debt is not treated as stock under these programs regardless of value fluctuations of other equity
Public Groups

- Public groups created under the Section 382 rules are treated as 5% shareholders
  - Shareholders who own less than 5% of the stock are treated as a public group
- Certain groups of people acting in concert such that they are treated as an “entity” under the rules
Summary of Event

On or about February 1, 2004, the Company issued approximately 400 common shares in a public offering and converted all Series A preferred stock into common stock.

- On or about February 1, 2004, the Company issued 400 shares of common stock to the public for total consideration of approximately $400 (or $1.00 per share). In addition, all of Investor A’s Series A preferred stock was converted 2-for-1 into the Company’s common stock.
- Based on an issue price of $1.00 per common share the cumulative owner shift as of February 1, 2004 was 37.5%.
- Public Group 1 was created pursuant to the aggregation and segregation rules of Reg. Section 1.382-2T(j) to account for the issuance of common stock. Shareholders who own less than 5% of the loss corporation on a testing date are aggregated under Reg. Section 1.382-2T(j)(1) and treated as a single 5-percent shareholder, referred to as a “public group” under Reg. Section 1.382-2T(f)(13).
### Equity Rollforward: Public Offering as of February 1, 2004 (Preferred Conversion)

<table>
<thead>
<tr>
<th>5% S/Hs</th>
<th># of Common Shares</th>
<th># of A Pfd Shares</th>
<th>Testing Date #2: IPO</th>
<th>Testing Date #2: Pfd</th>
<th>Value: Common</th>
<th>Value: A Pfd</th>
<th>Total Value</th>
<th>Testing Date %</th>
<th>Testing Period Low %</th>
<th>Shift in Owner %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Founder</td>
<td>1,000</td>
<td>0</td>
<td>200</td>
<td>(100)</td>
<td>$1.00</td>
<td>$2.00</td>
<td>$1,000</td>
<td>83.3%</td>
<td>83.3%</td>
<td>0%</td>
</tr>
<tr>
<td>Investor A</td>
<td>0</td>
<td>100</td>
<td>200</td>
<td>(100)</td>
<td>$1.00</td>
<td>$2.00</td>
<td>$200</td>
<td>16.7%</td>
<td>0%</td>
<td>16.7%</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td><strong>1,000</strong></td>
<td><strong>100</strong></td>
<td><strong>200</strong></td>
<td><strong>(100)</strong></td>
<td><strong>$1,200</strong></td>
<td><strong>$100</strong></td>
<td><strong>$1,300</strong></td>
<td><strong>100%</strong></td>
<td><strong>83.3%</strong></td>
<td><strong>16.7%</strong></td>
</tr>
</tbody>
</table>
## Equity Rollforward: Public Offering as of February 1, 2004 (New Common Shares)

<table>
<thead>
<tr>
<th>5% S/Hs</th>
<th># of Common Shares</th>
<th># of A Pfd Shares</th>
<th>Testing Date #2: IPO</th>
<th>Value: Common</th>
<th>Value: A Pfd</th>
<th>Total Value</th>
<th>Testing Date %</th>
<th>Testing Period Low %</th>
<th>Shift in Owner %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Founder</td>
<td>1,000</td>
<td>0</td>
<td>IPO</td>
<td>$1.00</td>
<td>n/a</td>
<td>$1,000</td>
<td>62.5%</td>
<td>62.5</td>
<td>0%</td>
</tr>
<tr>
<td>Investor A</td>
<td>200</td>
<td>0</td>
<td></td>
<td>$1.00</td>
<td>n/a</td>
<td>$200</td>
<td>12.5%</td>
<td>0%</td>
<td>12.5%</td>
</tr>
<tr>
<td>Public Group 1</td>
<td>0</td>
<td>0</td>
<td>400</td>
<td>$1.00</td>
<td>n/a</td>
<td>$400</td>
<td>25.0%</td>
<td>0%</td>
<td>25.0%</td>
</tr>
<tr>
<td>TOTALS</td>
<td>1,200</td>
<td>0</td>
<td>400</td>
<td></td>
<td></td>
<td>$1,600</td>
<td>100%</td>
<td>62.5%</td>
<td>37.5%</td>
</tr>
</tbody>
</table>
Small Issuance Exception

- Exempts “small issuances” from the normal segregation rules to the extent the amount of stock issued in that issuance and other issuances in which the limitation is applied during the year do not exceed the remaining small issuance limitation on that date.

- Limitation is equal to 10% of the total value of the corporation’s stock outstanding at the beginning of the year.
  - Can also be done on a class by class basis.
  - If the amount of the issuance exceeds the limitation, none of that issuance qualifies.
    - Take into account remaining balance from prior issuances.

- Effect: stock is treated as acquired by existing public groups.
During the tax year ended December 31, 2004, the Company issued approximately 20 shares of common stock pursuant to its employee stock option plan:

- During the tax year ended December 31, 2004, the Company issued 20 shares of common stock to employees upon the exercise of options. None of these employees was a 5-percent shareholder as defined in Section 382(k)(7).
- The Company’s issuance of 20 shares of common stock upon the exercise of options is considered a small issuance under Section 382. The total issuance valued at $20 does not exceed the small issuance limitation of $120 (based on the value of the Company’s common and preferred stock at January 1, 2004 of $1,200 times 10%). The segregation rules of Treas. Reg. Section 1.382-2T(j)(iii)(B) do not apply to the option exercise because it does not exceed the small issuance limitation. Pursuant to Treas. Reg. Section 1.382-3(j)(5), each of Company’s existing direct public groups should be treated as having acquired a proportionate number of the shares issued. Since Company had only one public group on the relevant date, all of the shares were allocated to that public group.
- The cumulative owner shift as of December 31, 2004 was 38.3%.
### Small Issuance Limitation (based on value)

#### Calculation of Limitation:

<table>
<thead>
<tr>
<th>Stock Type</th>
<th>Shares</th>
<th>Value per Share</th>
<th>Total Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common Stock at 1/1/04</td>
<td>1,000 shares</td>
<td>$1.00</td>
<td>$1,000</td>
</tr>
<tr>
<td>Preferred Stock at 1/1/04</td>
<td>100 shares</td>
<td>$2.00</td>
<td>$200</td>
</tr>
<tr>
<td>Total Value at 1/1/04</td>
<td></td>
<td></td>
<td>$1,200</td>
</tr>
<tr>
<td>Small Issuance Limit %</td>
<td></td>
<td></td>
<td>10%</td>
</tr>
<tr>
<td><strong>LIMITATION</strong></td>
<td></td>
<td></td>
<td><strong>$120</strong></td>
</tr>
</tbody>
</table>

#### Limitation Used:

- **Stock Option Exercises**: ($20)

#### REMAINING LIMITATION

**$100**
## Equity Rollforward: Exercise of Stock Options as of December 31, 2004

<table>
<thead>
<tr>
<th>5% S/Hs</th>
<th># of Common Shares</th>
<th># of A Pfd Shares</th>
<th>Testing Date #3: Options</th>
<th>Value: Common</th>
<th>Value: A Pfd</th>
<th>Total Value</th>
<th>Testing Date %</th>
<th>Testing Period Low %</th>
<th>Shift in Owner %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Founder</td>
<td>1,000</td>
<td>0</td>
<td>61.7%</td>
<td>$1.00</td>
<td>n/a</td>
<td>$1,620</td>
<td>100%</td>
<td>61.7%</td>
<td>38.3%</td>
</tr>
<tr>
<td>Investor A</td>
<td>200</td>
<td>0</td>
<td>12.3%</td>
<td>$1.00</td>
<td>n/a</td>
<td>$200</td>
<td>12.3%</td>
<td>0%</td>
<td>12.3%</td>
</tr>
<tr>
<td>Public Group 1</td>
<td>400</td>
<td>0</td>
<td>26.0%</td>
<td>$1.00</td>
<td>n/a</td>
<td>$420</td>
<td>26.0%</td>
<td>0%</td>
<td>26.0%</td>
</tr>
<tr>
<td>TOTALS</td>
<td>1,600</td>
<td>0</td>
<td>20</td>
<td>$1,620</td>
<td></td>
<td></td>
<td>100%</td>
<td>61.7%</td>
<td>38.3%</td>
</tr>
</tbody>
</table>
Cash Issuance Exception

- Exempts a percentage of stock issued (in a solely-for-cash-issuance) from the regular segregation rules equal to one-half of aggregate percentage of stock owned by direct public groups immediately before the issuance.

- Effect: The portion of stock exempted is treated as acquired by the existing public groups.

- The exception as calculated above cannot exceed: total stock issued minus stock owned by 5% shareholders immediately following the issuance.
  - Absent actual knowledge, the 5% shareholders are deemed to have purchased in the cash offering.
On or about March 1, 2005 the Company issued approximately 200 common shares in public offering.

- On or about March 1, 2005 the Company issued 200 shares of common stock as consideration in a public offering valued at approximately $200 (or $1.00 per share).
- The cash issuance exception under Reg. Section 1.382-3(j)(3) was applied to this event and 26 of the 200 shares was allocated to the existing public group based on its percentage interest in the Company immediately prior to the acquisition (26% x 1/2 x 200 shares = 26 shares). The remaining 174 common shares were allocated to a new public group, “Public Group 2.”
- Based on a value of $1.00 per common share the cumulative owner shift as of March 1, 2005 was 45.0%.
### Illustration: Cash Issuance Exception

<table>
<thead>
<tr>
<th>Cash Issuance Application to Issuance of 200 Shares</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Allocation to Existing Public Groups</strong></td>
</tr>
<tr>
<td>Public Group 1</td>
</tr>
<tr>
<td><strong>Allocation to New Public Group</strong></td>
</tr>
<tr>
<td>Public Group 2</td>
</tr>
<tr>
<td><strong>TOTAL SHARES</strong></td>
</tr>
</tbody>
</table>
# Equity Rollforward: Public Offering as of March 1, 2005

<table>
<thead>
<tr>
<th>5% S/Hs</th>
<th># of Common Shares</th>
<th># of A Pfd Shares</th>
<th>Testing Date #4: Offering</th>
<th>Value: Common</th>
<th>Value: A Pfd</th>
<th>Total Value</th>
<th>Testing Date %</th>
<th>Testing Period Low %</th>
<th>Shift in Owner %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Founder</td>
<td>1,000</td>
<td>0</td>
<td></td>
<td>$1.00</td>
<td>n/a</td>
<td>$1,000</td>
<td>55.0%</td>
<td>55.0%</td>
<td>0%</td>
</tr>
<tr>
<td>Investor A</td>
<td>200</td>
<td>0</td>
<td></td>
<td>$1.00</td>
<td>n/a</td>
<td>$200</td>
<td>11.0%</td>
<td>0%</td>
<td>11.0%</td>
</tr>
<tr>
<td>Public Group 1</td>
<td>420</td>
<td>0</td>
<td>26</td>
<td>$1.00</td>
<td>n/a</td>
<td>$446</td>
<td>24.5%</td>
<td>0%</td>
<td>24.5%</td>
</tr>
<tr>
<td>Public Group 2</td>
<td>0</td>
<td>0</td>
<td>174</td>
<td>$1.00</td>
<td>n/a</td>
<td>$174</td>
<td>9.5%</td>
<td>0%</td>
<td>9.5%</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td><strong>1,620</strong></td>
<td>0</td>
<td><strong>200</strong></td>
<td></td>
<td></td>
<td><strong>$1,820</strong></td>
<td><strong>100%</strong></td>
<td><strong>55.0%</strong></td>
<td><strong>45.0%</strong></td>
</tr>
</tbody>
</table>
Summary of Event

Founder sold 10 shares of common stock in the Company on the open market as of April 1, 2005

- On or about April 1, 2005, Founder reported a sale of 10 shares of common stock in the Company on Schedule 13D with the S.E.C.
- Under the segregation rules and Reg. Section 1.382-2T(j)(3)(i), each direct public group that exists immediately after a disposition by a direct 5 percent shareholder shall be segregated so that the ownership interests of each public group that existed immediately before the transaction are separate from the public group that acquires stock of the loss corporation. As a result, a new public group, Public Group 3, was created to represent the sale of shares by Founder.
- Accordingly, the percentage shift in ownership percentage as a result of this sale is 45.6% as of April 1, 2005.
## Equity Rollforward: Sale by 5% Shareholder as of April 1, 2005

<table>
<thead>
<tr>
<th>5% S/Hs</th>
<th># of Common Shares</th>
<th># of A Pfd Shares</th>
<th>Testing Date #5: Sale</th>
<th>Value: Common</th>
<th>Value: A Pfd</th>
<th>Total Value</th>
<th>Testing Date %</th>
<th>Testing Period Low %</th>
<th>Shift in Owner %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Founder</td>
<td>1,000</td>
<td>0</td>
<td>(10)</td>
<td>$1.00</td>
<td>n/a</td>
<td>$990</td>
<td>54.4%</td>
<td>54.4%</td>
<td>0%</td>
</tr>
<tr>
<td>Investor A</td>
<td>200</td>
<td>0</td>
<td></td>
<td>$1.00</td>
<td>n/a</td>
<td>$200</td>
<td>11.0</td>
<td>0%</td>
<td>11.0%</td>
</tr>
<tr>
<td>Public Group 1</td>
<td>446</td>
<td>0</td>
<td></td>
<td>$1.00</td>
<td>n/a</td>
<td>$446</td>
<td>24.5%</td>
<td>0%</td>
<td>24.5%</td>
</tr>
<tr>
<td>Public Group 2</td>
<td>174</td>
<td>0</td>
<td></td>
<td>$1.00</td>
<td>n/a</td>
<td>$174</td>
<td>9.5%</td>
<td>0%</td>
<td>9.5%</td>
</tr>
<tr>
<td>Public Group 3</td>
<td>0</td>
<td>0</td>
<td>10</td>
<td>$1.00</td>
<td>n/a</td>
<td>$10</td>
<td>0.6%</td>
<td>0%</td>
<td>0.6%</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td><strong>1,820</strong></td>
<td><strong>0</strong></td>
<td><strong>0</strong></td>
<td></td>
<td></td>
<td><strong>$1,820</strong></td>
<td><strong>100%</strong></td>
<td><strong>54.4%</strong></td>
<td><strong>45.6%</strong></td>
</tr>
</tbody>
</table>
Summary of Event

Founder sold 300 shares of common stock in the Company on the open market as of June 1, 2006

- On or about June 1, 2006, Founder reported a sale of 300 shares of common stock in the Company on Schedule 13D with the S.E.C.
- Under the segregation rules and Reg. Section 1.382-2T(j)(3)(i), each direct public group that exists immediately after a disposition by a direct 5 percent shareholder shall be segregated so that the ownership interests of each public group that existed immediately before the transaction are separate from the public group that acquires stock of the loss corporation. As a result, a new public group, Public Group 4, was created to represent the sale of shares by Founder.
- Accordingly, the percentage shift in ownership percentage as a result of this sale is 51.1% as of June 1, 2006. This exceeds the 50% threshold and, consequently, an ownership change has occurred.
## Equity Rollforward: Sale by 5% Shareholder as of June 1, 2006

<table>
<thead>
<tr>
<th>5% S/Hs</th>
<th># of Common Shares</th>
<th># of A Pfd Shares</th>
<th>Testing Date #6: Sale</th>
<th>Value: Common</th>
<th>Value: A Pfd</th>
<th>Total Value</th>
<th>Testing Date %</th>
<th>Testing Period Low %</th>
<th>Shift in Owner %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Founder</td>
<td>990</td>
<td>0</td>
<td>(300)</td>
<td>$1.00</td>
<td>n/a</td>
<td>$690</td>
<td>37.9%</td>
<td>37.9%</td>
<td>0%</td>
</tr>
<tr>
<td>Investor A</td>
<td>200</td>
<td>0</td>
<td></td>
<td>$1.00</td>
<td>n/a</td>
<td>$200</td>
<td>11.0</td>
<td>11.0%</td>
<td>0% *</td>
</tr>
<tr>
<td>Public Group 1</td>
<td>446</td>
<td>0</td>
<td></td>
<td>$1.00</td>
<td>n/a</td>
<td>$446</td>
<td>24.5%</td>
<td>0%</td>
<td>24.5%</td>
</tr>
<tr>
<td>Public Group 2</td>
<td>174</td>
<td>0</td>
<td></td>
<td>$1.00</td>
<td>n/a</td>
<td>$174</td>
<td>9.5%</td>
<td>0%</td>
<td>9.5%</td>
</tr>
<tr>
<td>Public Group 3</td>
<td>10</td>
<td>0</td>
<td></td>
<td>$1.00</td>
<td>n/a</td>
<td>$10</td>
<td>0.6%</td>
<td>0%</td>
<td>0.6%</td>
</tr>
<tr>
<td>Public Group 4</td>
<td>0</td>
<td>0</td>
<td>300</td>
<td>$1.00</td>
<td>n/a</td>
<td>$300</td>
<td>16.5%</td>
<td>0%</td>
<td>16.5%</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td><strong>1,820</strong></td>
<td><strong>0</strong></td>
<td><strong>0</strong></td>
<td><strong>$1,820</strong></td>
<td><strong>n/a</strong></td>
<td><strong>1,820</strong></td>
<td><strong>100%</strong></td>
<td><strong>48.9%</strong></td>
<td><strong>51.1%</strong></td>
</tr>
</tbody>
</table>

*Note that Investor A’s original investment in the Company is now outside the 3-year testing period.*
Agenda

A. Determination of an Ownership Change
B. Section 382 Limitation
C. Determination of Built-in Gains and Losses
D. Bankruptcy Issues
E. Consolidated Return Issues
   A. New Members
   B. Departing Members
F. Information Statement
Section 382 Limitation

Fair Market Value of old loss corporation multiply by a published IRS rate (long term tax exempt rate) subject to certain adjustments
Section 382 Limitation Value

- Does not include any new investment being made on the change date
- Value of pure preferred (1504(a)(4) stock) is included in the limitation calculation
  - Even though not tracked for equity shifts
- Market capitalization of a public company may be the starting point
  - Does a control premium matter? See TAM 200513027
Adjustments to Value

- Holding “substantial nonbusiness assets” (1/3 of total asset value) immediately after the ownership change.
- May be required to back out value of *capital contributions* made within 2 years of ownership change if they are pursuant to a plan.
- Annual limitation may become zero if continuity of business enterprise is violated within 2 years of change.
  - A loss group is treated as a single entity for this test.
    - need at least one member loss group member to continue business.
- Corporate contractions.
  - PLR 200406027 no corporate contraction where target guaranteed debt.
Capital Contributions and Section 382(l)(1)

- No regulations
- Legislative history allows disregarding of:
  - Contributions on formation
  - Contributions before loss corporation status exists
  - Contributions to meet basic operations (e.g. meet payroll or other operating expenses)
- For example, in PLR 200730003 capital contributions made so that a life insurance company could maintain minimum capitalization requirements were not excluded from value by the Section 382(l)(1) anti-stuffing rule.
  - See also TAM 9332004, PLR 9508035, PLR 9541019, PLR 9630038, PLR 9706014, PLR 9835027
Notice 2008-78

• Taxpayers may rely on the rules in the Notice for purposes of determining whether a capital contribution is part of a plan with respect to an ownership change that occurs in any taxable year ending on or after September 26, 2008

• Turns off the *presumption*
Notice 2008-78

• Establishes four safe harbors
  – The contribution is made by a less than 20% unrelated shareholder and the ownership change occurs more than six months after the contribution
  – The contribution is made by a related party but no more than 10% of the total value of the loss corporation’s stock is issued in connection with the contribution, or the contribution is made by a person other than a related party and the ownership change occurs more than one year after the contribution
• Establishes four safe harbors (cont’d)
  – The contribution is made in exchange for stock issued in connection
    with the performance of services, or stock acquired by a retirement
    plan
  – The contribution is received on the formation of a loss corporation
    (not accompanied by the incorporation of assets with a net unrealized
    built in loss) or it is received before the first year from which there is a
    carryforward of tax attributes
• Nothing about contributions to meet basic operations
Calculation of the Section 382 Limitation

Section 382 Limitation Example:

- Value immediately before change $1,820
- Capital Contributions pursuant to a plan ($200)
- Adjusted value $1,620
- Published rate (L.T. tax exempt) 5.00%
- Annual NOL Limitation $81
- Annual limitation accrues, *even if unused*
Successive Ownership Changes

- If two or more successive ownership changes, then each Section 382 limitation is applied independently (Reg. Section 1.382-5(d))
  - Later ownership changes may result in a lower, but not a higher, Section 382 limitation
  - Application of rule may result in layers of NOLs where each layer is subject to different limitations
  - A single low limitation can trap prior NOLs, and subsequent limitations can not create a higher limitation for previously limited NOLs
NUBIGs & NUBILs

• Requires any loss corporation with an ownership change to determine whether it has a Net Unrealized Built-In Gain ("NUBIG") or NUBIL

• If a corporation has a NUBIL, then built-losses recognized during the five-year recognition period are treated as pre-change losses and subject to the Section 382 annual limitation

• If a corporation has a NUBIG, then built-in gains recognized during the five-year recognition period will increase the Section 382 limitation

• Threshold amount (if doesn’t meet, NUBIG or NUBIL is 0):
  – $10 million or
  – If less than $10 million, 15% of the value of the assets
• Recognized built-in gain ("RBIG") or recognized built-in loss ("RBIL") is incurred when the loss corporation disposes of an asset that had a built-in gain or loss at the time of the ownership change.
• A stand-alone loss corporation can have a NUBIG or NUBIL, but not both.
  – A loss corporation with a NUBIG must establish that any gain recognized is a RBIG.
  – A loss corporation with a NUBIL must establish that any loss recognized is not a recognized built-in loss RBIL.
• Items of income and items of deduction are treated as RBIG or RBIL if the item is “properly taken into account during the recognition period” and is “attributable to periods before the change date”
  – RBIL includes depreciation deductions on the excess depreciation over the recomputed depreciation based upon fair market value

• Special NUBIL calculation rule:
  – If NUBIL and 80% of loss corporation stock is acquired within a 12 month period
    • Asset value cannot exceed the grossed up amount paid for the stock plus loss corporation’s liabilities
    • Rule apparently applies to NUBIL but not necessarily RBIL
    • Consider sales of inventory following a bargain purchase
    • Similar to AGUB under Sec. 338
Bank Acquisitions

Notice 2008-83

- Turns off application of Section 382(h) to bank loans and bad debts
- No built-in loss or deduction attributable to pre-change period
- Only applies to banks
- Wells Fargo Acquisition of Wachovia
- Within the IRS’s authority?
- Can apply to open years

Repealed in ARRA will not apply for ownership changes occurring after January 16, 2009, unless pursuant to an agreement entered into before January 16, 2009
Notice 2003-65:

• Provides a single method for calculating NUBIG/NUBIL
• Provides two safe harbor methods for determining RBIG and RBIL
  – Sec. 338 method
    • Hypothetical buyer
  – Sec. 1374 method
• Notice is effective until temporary or final regulations are issued
  – Look for new guidance soon
Notice 2003-65 (cont’d)

• Increase Section 382 limitation for recognized built-in gains and “deemed” amortization of certain assets
  – Section 1374 approach
    • COD and bad debt deductions – 12 month rule for RBIG and RBIL
  – Section 338 approach

• Contingent consideration and liabilities are valued as of the date of the ownership change
Section 338 Method:

• Hypothetical Section 338 transaction
  – Determine AGUB based upon value of equity on the date of change

• Adopts “wasting asset” approach

• In determining RBIG & RBIL look to income and deductions that would have occurred in a Section 338 transaction and compare to actual tax items
  – Including depreciation & amortization
Notice 2003-65 Example

Hypothetical Section 338 purchase of the loss corporation under IRS Notice 2003-65:

- Company Value $1,820
- Company Liabilities $600
- Hypothetical ADSP $2,420
- Est. Tax Basis in Assets $2,270
- NUBIG $150
Hypothetical Section 338 Purchase of the Company under IRS Notice 2003-65 (continued):

- NUBIG (from prior slide) $150
  - NUBIG attributable to Asset 1 $30
  - NUBIG attributable to Goodwill $120

- Hypothetical Amortization on Goodwill
  - NUBIG attributable to Goodwill $120
  - Amortization period / 15 years
  - Hypothetical amortization $8 per year
## Adjustments to Section 382 Limitation in 5 Year Recognition Period

<table>
<thead>
<tr>
<th></th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
<th>Year 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gain on Disposition of Asset 1</td>
<td>-</td>
<td>30</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Hypothetical Amortization (5 years)</td>
<td>8</td>
<td>8</td>
<td>8</td>
<td>8</td>
<td>8</td>
<td>-</td>
</tr>
<tr>
<td>Total Recognized Built-In Gain</td>
<td>8</td>
<td>38</td>
<td>8</td>
<td>8</td>
<td>8</td>
<td>0</td>
</tr>
<tr>
<td>PLUS: Annual NOL Limitation</td>
<td>81</td>
<td>81</td>
<td>81</td>
<td>81</td>
<td>81</td>
<td>81</td>
</tr>
<tr>
<td><strong>EQUALS: Adjusted Limitation</strong></td>
<td><strong>89</strong></td>
<td><strong>119</strong></td>
<td><strong>89</strong></td>
<td><strong>89</strong></td>
<td><strong>89</strong></td>
<td><strong>81</strong></td>
</tr>
</tbody>
</table>
A. Determination of an Ownership Change
B. Section 382 Limitation
C. Determination of Built-in Gains and Losses
D. Bankruptcy Issues
E. Consolidated Return Issues
   A. New Members
   B. Departing Members
F. Information Statement
Section 382 in Bankruptcy

Special Rules

• Assuming that loss corporation has NOLs and other attributes that survive attribute reduction under Section 108(b), Section 382 will likely apply to the utilization of losses post bankruptcy
  – Consider the impact of an election under Section 108(b)(5)

• 382(l)(5) - generally provides for no limitation on use of NOLs if certain requirements are met

• 382(l)(6) – generally provides for increased limitation if certain requirements are met
  – (l)(6) is applicable if requirements for (1)(5) are not met or if debtor elects out of (l)(5)
Section 382 in Bankruptcy

382(l)(5)

• In title 11 immediately before the change

• Continuity of interest (tests pre-change shareholders and “qualified creditors”)
  – Post bankruptcy former creditors or historic shareholders must hold greater than 50% of the vote and value
    • Special option rules for determining ownership that may have retroactive effect
    • Example: options or warrants exercised by creditors and historic shareholders within three years of emergence from bankruptcy could allow a loss corporation to qualify for Section 382(l)(5) benefits back to the emergence from bankruptcy
Section 382 in Bankruptcy

382(l)(5) Effects and Consequences

• The use of pre-change losses is not subject to limitation under Section 382
• If another ownership change occurs within 2 years, the Section 382 limitation with respect to the second ownership change will be zero
• Interest haircut:
  – NOLs & excess credits are reduced by:
    • Interest on the debt converted into equity in the bankruptcy proceeding (interest haircut) that was paid or accrued in:
    • Any taxable year ending during the three-year period preceding the taxable year in which the ownership change occurs, and
    • The period of the taxable year in which the ownership change occurs on or before the change date
• CCA 200915033 – (l)(5) not available for “pre-packaged bankruptcy”
Section 382 in Bankruptcy

Example:

• A loss corporation enters bankruptcy with $500M in NOL
• $300M of debt is cancelled and the creditors receive $100M worth of equity
• $50M of interest was incurred on the converted debt during the look back period
• $200M of COD is excluded, none of which relates to accrued interest on the converted debt
• The NOLs are reduced to $250M ($500-$200-$50)
382(l)(6)

- Certain tax-free reorganizations; or
- Title 11 case; and
- 382(l)(5) doesn’t apply
- Must continue the business for 2 years following the change date or the 382 limitation is 0
Section 382 in Bankruptcy

382(l)(6) Effects

- 382 limit applies
- Limitation is based on enhanced value following surrender or cancellation of creditor’s claims
- Interest haircut does not apply
Section 382 in Bankruptcy

Choosing between (l)(5) and (l)(6)
- Compare amount of NOLs
- Compare amount of COD income
- Interest haircut
- Comfort the transaction will qualify under (l)(5)
- Application of Notice 2003-65
- Future plans
  - Ownership change
  - Continuing the business
  - May want to modify bylaws/charter to prevent sales for 2 years
Agenda

A. Determination of an Ownership Change
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E. Consolidated Return Issues
   A. New Members
   B. Departing Members
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Loss Groups

• A loss group is a consolidated group that meets one of 3 tests:
  – NOL carryover that did not arise in a Separate Return Limitation Year (“SRLY”)
  – CNOL for a taxable year in which a testing date for the common parent occurs, or
  – NUBIL
Loss Group (cont’d)

- Rules generally employ a single-entity approach for determining ownership changes
- Parent Change method
  - An ownership change of the common parent constitutes a change for the group
  - Ignores changes in subsidiaries (even if they wouldn’t have had a change)
Loss Group (cont’d)

• Supplemental method
  – Any 5% shareholder of the parent increases his percentage ownership (by any amount) in both the parent and any subsidiary of the loss group
  – During a 3 year period (or shorter if a change occurs)
  – Needs to be pursuant to a plan
  – Result: treats the common parent as though it had issued its own stock to the person acquiring the subsidiary stock
New Members

• For NOL purposes, a loss subgroup refers to a group of affiliated companies (at least 2) that joined the present group
  – Must have a common parent
  – Must bear a relationship to each other described in Section 1504 immediately after they become members of the group
    • different than the SRLY rules
  – At least one of the members is carrying forward a non-SRLY NOL with respect to the former group
New Members (cont’d)

• For NUBIL purposes, a loss subgroup refers to a group of affiliated companies that joined the present group
  – Must have been continuously affiliated with each other for 5 years consecutive years before they became members of the group
  – Must bear a relationship to each other described in Section 1504 immediately after they become members of the group
  – Must have a NUBIL when they become members
New Members (cont’d)

• Changes also determined under the loss group rules
  – Parent Change Method
  – Supplemental Method
• Subgroup limitation
  – Equal to the value of the subgroup
• Brother/sister companies leaving a group without a common parent and joins another can file an election to be treated as a single loss subgroup parent
  – Practice Tip: 1.1502-96(e) election requirements
New Members (cont’d)

- All members were affiliated with each other in former group
- At least one member carries a non-SRLY loss from the former group
- Possibility of 2 loss Subgroups
Separate Entity Tracking

Subsidiary that is not a member of a loss group

- A subgroup joined the group without having an ownership change (either at the time or within 6 months prior), the subgroup will be tracked for ownership changes until the earlier of
  - Its having an ownership change, or
  - 5th anniversary of joining the group

- If separate tracking ceases, the NOL is treated as a CNOL and on the parent change method
Separate Entity Tracking (cont’d)

Before

Public

P

X1

55%

S1

S2

45%

A

P and X1 file a consolidated return

S1 and S2 have historically filed a separate consolidated return

After

Public

P

X1

100%

S1

S3
Departing Members

- When a member leaves a consolidated group, the parent can allocate a portion of the CNOL to the departing member.
- Proper modeling of loss utilization is key.
- If the group underwent an ownership change while the member was part of the group, the limitation attributable to the departing member will be zero (automatic).
Election for Departing Members

- **Planning tip:** common parent may file an election to apportion part or all the Section 382 limitation to the departing member
- Calculating the apportionment
  - Value element
  - Adjustment element
- An apportionment reduces the consolidated Section 382 limitation for the remaining members of the group
- Can also allocate a departing member’s NUBIL
- Election requirements Treas. Reg. Section 1.1502-95(f)(1)
  - Must be signed by the common parent (not the loss subgroup parent) and former member
  - Only revocable by the commissioner
Consolidated Section 382 Limitation

• Value of the loss group is based on the value of the stock of the parent plus the value of each member owned directly and indirectly immediately before the change
• Includes minority stock holdings of subsidiary stock
• The value of intercompany stock is eliminated
• Adjusted by all the same rules that a stand-alone corporation would be on a group basis
Consolidated NUBIG/NUBIL

• For consolidated purposes, the membership includes the common parent and all other members that have been affiliated with the common parent for 5 consecutive years
  – Does not include unrealized gain or loss on stock or intercompany obligations of members included in the group

• For a consolidated group, each member computes its NUBIG or NUBIL on a separate amount and then netted to arrive at the group’s NUBIG or NUBIL
  – NUBIG all members are included
  – NUBIL not all members may be included depending on how loss group or loss subgroup rules are applied
Agenda

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Reporting Loss Corporation Ownership Changes

• Include a statement in federal return for each year an owner shift occurs

• Some details to include:
  – Dates of owner shifts
  – Dates of ownership changes
  – Amount of attributes

• Common parent of a group that has a loss subgroup must file an information statement for the loss subgroup
  – Can be included in the parent’s statement (doesn’t need to be separate)
Example: Section 382 Statement

Statement Pursuant to Reg. § 1.382-11(a)

By the Company, Inc.

EIN 12-3456789

For the tax year ended December 31, 2006

1. Owner shifts, equity structure shifts, or other transactions described in paragraph (a)(2)(i) of Reg. § 1.382-2T occurred on the following dates during the taxable year:
   • June 1, 2006

2. An ownership change occurred on June 1, 2006

3. Following is a list of attributes described in paragraph (a)(1)(i) of Reg. § 1.382-2 that caused the corporation to be a loss corporation:
   • Net operating loss carryforward of $500

4. The closing-of-the-books election under Reg. § 1.382-6(b) is hereby made with respect to the ownership change occurring on June 1, 2006
Appendix A

Schedule 13G
SCHEDULE 13G

Under the Securities Exchange Act of 1934

(Amendment No. _________)*

(Name of Issuer)

(Title of Class of Securities)

(CUSIP Number)

(Date of Event Which Requires Filing of this Statement)

Check the appropriate box to designate the rule pursuant to which this Schedule is filed:

☐ Rule 13d-1(b)

☐ Rule 13d-1(c)

☐ Rule 13d-1(d)

*The remainder of this cover page shall be filled out for a reporting person’s initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter the disclosures provided in a prior cover page.

The information required in the remainder of this cover page shall not be deemed to be “filed” for the purpose of Section 18 of the Securities Exchange Act of 1934 (“Act”) or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.
CUSIP No. ........................................

1. Names of Reporting Persons.
   I.R.S. Identification Nos. of above persons (entities only).

2. Check the Appropriate Box if a Member of a Group (See Instructions)
   
   (a)  ........................................................................................................

   (b)  ........................................................................................................

3. SEC Use Only ..........................................................................................

4. Citizenship or Place of Organization ......................................................

| Number of Shares Beneficially Owned by Each Reporting Person With: | 5. Sole Voting Power.................................................................................... |
| | 6. Shared Voting Power................................................................................ |
| 7. Sole Dispositive Power............................................................................ |
| 8. Shared Dispositive Power........................................................................ |

9. Aggregate Amount Beneficially Owned by Each Reporting Person

10. Check if the Aggregate Amount in Row (9) Excludes Certain Shares (See Instructions).

11. Percent of Class Represented by Amount in Row (9) ...................................

12. Type of Reporting Person (See Instructions)

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INSTRUCTIONS FOR SCHEDULE 13G

Instructions for Cover Page

(1) Names and I.R.S. Identification Numbers of Reporting Persons—Furnish the full legal name of each person for whom the report is filed—i.e., each person required to sign the schedule itself—including each member of a group. Do not include the name of a person required to be identified in the report but who is not a reporting person. Reporting persons that are entities are also requested to furnish their I.R.S. identification numbers, although disclosure of such numbers is voluntary, not mandatory (see “SPECIAL INSTRUCTIONS FOR COMPLYING WITH SCHEDULE 13G” below).

(2) If any of the shares beneficially owned by a reporting person are held as a member of a group and that membership is expressly affirmed, please check row 2(a). If the reporting person disclaims membership in a group or describes a relationship with other persons but does not affirm the existence of a group, please check row 2(b) (unless it is a joint filing pursuant to Rule 13d-1(k)(1) in which case it may not be necessary to check row 2(b)).

(3) The third row is for SEC internal use; please leave blank.

(4) Citizenship or Place of Organization—Furnish citizenship if the named reporting person is a natural person. Otherwise, furnish place of organization.

(5)-(9), (11), Aggregate Amount Beneficially Owned By Each Reporting Person, Etc.—Rows (5) through (9) inclusive, and (11) are to be completed in accordance with the provisions of Item 4 of Schedule 13G. All percentages are to be rounded off to the nearest tenth (one place after decimal point).

(10) Check if the aggregate amount reported as beneficially owned in row (9) does not include shares as to which beneficial ownership is disclaimed pursuant to Rule 13d-4 (17 CFR 240.13d-4) under the Securities Exchange Act of 1934.

(12) Type of Reporting Person—Please classify each “reporting person” according to the following breakdown (see Item 3 of Schedule 13G) and place the appropriate symbol on the form:

<table>
<thead>
<tr>
<th>Category</th>
<th>Symbol</th>
</tr>
</thead>
<tbody>
<tr>
<td>Broker Dealer</td>
<td>BD</td>
</tr>
<tr>
<td>Bank</td>
<td>BK</td>
</tr>
<tr>
<td>Insurance Company</td>
<td>IC</td>
</tr>
<tr>
<td>Investment Company</td>
<td>IV</td>
</tr>
<tr>
<td>Investment Adviser</td>
<td>IA</td>
</tr>
<tr>
<td>Employee Benefit Plan, Pension Fund, Endowment Fund</td>
<td>EP</td>
</tr>
<tr>
<td>Parent Holding Company/Control Person</td>
<td>PC</td>
</tr>
<tr>
<td>Savings Association</td>
<td>SA</td>
</tr>
<tr>
<td>Church Plan</td>
<td>CP</td>
</tr>
<tr>
<td>Corporation</td>
<td>CO</td>
</tr>
<tr>
<td>Partnership</td>
<td>PN</td>
</tr>
<tr>
<td>Individual</td>
<td>IN</td>
</tr>
<tr>
<td>Other</td>
<td>GO</td>
</tr>
</tbody>
</table>

Notes: Attach as many copies of the second part of the cover page as are needed, one reporting person per page.

Filing persons may, in order to avoid unnecessary duplication, answer items on the schedules (Schedule 13D, 13G or 13D-1) by appropriate cross references to an item or items on the cover page(s). This approach may only be used where the cover page item or items provide all the disclosure required by the schedule item. Moreover, such use of a cover page item will result in the item becoming a part of the schedule and accordingly being considered as “filed” for purposes of Section 18 of the Securities Exchange Act or otherwise subject to the liabilities of that section of the Act.

Reporting persons may comply with their cover page filing requirements by filing either completed copies of the blank forms available from the Commission, printed or typed facsimiles, or computer printed facsimiles, provided the documents filed have identical formats to the forms prescribed in the Commission’s regulations and meet existing Securities Exchange Act rules as to such matters as clarity and size (Securities Exchange Act Rule 12b-12).

SPECIAL INSTRUCTIONS FOR COMPLYING WITH SCHEDULE 13G

Under Section 13(d), 13(g), and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this schedule by certain security holders of certain issuers.
Disclosure of the information specified in this schedule is mandatory, except for I.R.S. identification numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity securities. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can use it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. I.R.S. identification numbers, if furnished, will assist the Commission in identifying security holders and, therefore, in promptly processing statements of beneficial ownership of securities.

Failure to disclose the information requested by this schedule, except for I.R.S. identification numbers, may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules promulgated thereunder.

GENERAL INSTRUCTIONS

A. Statements filed pursuant to Rule 13d-1(b) containing the information required by this schedule shall be filed not later than February 14 following the calendar year covered by the statement or within the time specified in Rules 13d-1(b)(2) and 13d-2(c). Statements filed pursuant to Rule 13d-1(c) shall be filed within the time specified in Rules 13d-1(c), 13d-2(b) and 13d-2(d). Statements filed pursuant to Rule 13d-1(d) shall be filed not later than February 14 following the calendar year covered by the statement pursuant to Rules 13d-1(d) and 13d-2(b).

B. Information contained in a form which is required to be filed by rules under section 13(d) (15 U.S.C. 78m(f)) for the same calendar year as that covered by a statement on this schedule may be incorporated by reference in response to any of the items of this schedule. If such information is incorporated by reference in this schedule, copies of the relevant pages of such form shall be filed as an exhibit to this schedule.

C. The item numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative, so state.

Item 1.

(a) Name of Issuer

(b) Address of Issuer's Principal Executive Offices

Item 2.

(a) Name of Person Filing

(b) Address of Principal Business Office or, if none, Residence

(c) Citizenship

(d) Title of Class of Securities

(e) CUSIP Number

Item 3. If this statement is filed pursuant to §§240.13d-1(b) or 240.13d-2(b) or (c), check whether the person filing is a:

(a) Broker or dealer registered under section 15 of the Act (15 U.S.C. 78o).

(b) Bank as defined in section 3(a)(6) of the Act (15 U.S.C. 78c).

(c) Insurance company as defined in section 3(a)(19) of the Act (15 U.S.C. 78c).

(d) Investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C 80a-8).

(e) An investment adviser in accordance with §240.13d-1(b)(1)(ii)(E);

(f) An employee benefit plan or endowment fund in accordance with §240.13d-1(b)(1)(ii)(F);

(g) A parent holding company or control person in accordance with § 240.13d-1(b)(1)(ii)(G);

(h) A savings associations as defined in Section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(i) A church plan that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 (15 U.S.C. 80a-3).
Item 4. Ownership

Provide the following information regarding the aggregate number and percentage of the class of securities of the issuer identified in Item 1:

(a) Amount beneficially owned: __________
(b) Percent of class: __________
(c) Number of shares as to which the person has:
   (i) Sole power to vote or to direct the vote __________
   (ii) Shared power to vote or to direct the vote __________
   (iii) Sole power to dispose or to direct the disposition of __________
   (iv) Shared power to dispose or to direct the disposition of __________

Instruction: For computations regarding securities which represent a right to acquire an underlying security see §240.13d-3(f)(4).

Item 5. Ownership of Five Percent or Less of a Class

If this statement is being filed to report the fact that as of the date hereof the reporting person has ceased to be the beneficial owner of more than five percent of the class of securities, check the following ☐.

Instruction: Dissolution of a group requires a response to this item.

Item 6. Ownership of More than Five Percent on Behalf of Another Person.

If any other person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, such securities, a statement to that effect should be included in response to this item and, if such interest relates to more than five percent of the class, such person should be identified. A listing of the shareholders of an investment company registered under the Investment Company Act of 1940 or the beneficiaries of employee benefit plans, pension funds or endowment funds is not required.

Item 7. Identification and Classification of the Subsidiary Which Acquired the Security Being Reported on by the Parent Holding Company

If a parent holding company has filed this schedule, pursuant to Rule 13d-1(b)(6)(ii)(Q), so indicate under Item 3(g) and attach an exhibit stating the identity and the Item 3 classification of the relevant subsidiary. If a parent holding company has filed this schedule pursuant to Rule 13d-1(c) or Rule 13d-1(d), attach an exhibit stating the identification of the relevant subsidiary.

Item 8. Identification and Classification of Members of the Group

If a group has filed this schedule pursuant to §240.13d-1(b)(1)(i)(B), so indicate under Item 3(g) and attach an exhibit stating the identity and Item 3 classification of each member of the group. If a group has filed this schedule pursuant to §240.13d-1(c) or §240.13d-1(d), attach an exhibit stating the identity of each member of the group.

Item 9. Notice of Dissolution of Group

Notice of dissolution of a group may be furnished as an exhibit stating the date of the dissolution and that all further filings with respect to transactions in the security reported on will be filed, if required, by members of the group, in their individual capacity. See Item 5.

Item 10. Certification

(a) The following certification shall be included if the statement is filed pursuant to §240.13d-1(b):
By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were acquired and are held in the ordinary course of business and were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect.

(b) The following certification shall be included if the statement is filed pursuant to §240.13d-1(c):

By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect.

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Date

Signature

Name/Title

The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative other than an executive officer or general partner of the filing person, evidence of the representative’s authority to sign on behalf of such person shall be filed with the statement, provided, however, that a power of attorney for this purpose which is already on file with the Commission may be incorporated by reference. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

NOTE: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See §240.13d-7 for other parties for whom copies are to be sent.

Attention: Intentional misstatements or omissions of fact constitute Federal criminal violations (See 18 U.S.C. 1001)
Questions

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