

**MONROE BANCORP**  
**AUDIT COMMITTEE CHARTER**

**I. PURPOSE**

- A. The Audit Committee is a committee of the Board of Directors of Monroe Bancorp (the “Company”), appointed by the Board of Directors, and is established for the purpose of overseeing the accounting and financial reporting processes of the Company and the audits of the financial statements of the Company.
- B. The Audit Committee shall assist the Board of Directors in fulfilling its oversight responsibilities for:
1. the integrity of the financial statements of the Company;
  2. the systems of internal controls over the Company’s financial reporting, audit process, compliance with legal and regulatory requirements, and code of ethics that management and the Board of Directors have established;
  3. the qualifications and independence of the Company’s registered public accounting firm (the “Public Accountant”); and
  4. the performance of the internal audit function and the Public Accountant.
- C. The Audit Committee shall prepare a report of its activities for inclusion in the annual proxy statement of the Company as required by the rules of the Securities and Exchange Commission.
- D. The Audit Committee shall serve as the qualified legal compliance committee (the “QLCC”) in accordance with Section 307 of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated by the Securities and Exchange Commission (the “Commission”) thereunder.
- E. The Audit Committee shall provide an open avenue of communication between financial management, internal auditors, external auditors and the Board of Directors of the Company.

**II. COMPOSITION**

- A. The Audit Committee shall be comprised of at least three directors, each of whom must:
- (i) be independent as defined under Nasdaq Marketplace Rule 4200(a)(15), as set forth in Appendix A hereto;
  - (ii) meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Securities Exchange Act of 1934, as set forth in Appendix B hereto (subject to the exemptions provided in Rule 10A-3(c));
  - (iii) meet the requirements for inclusion on the QLCC under Section 205 of Title 17 of the Code of Federal Regulations, as set forth in Appendix C hereto;
  - (iv) not have participated in the preparation of the financial statements of the Company or any current subsidiary of the Company at any time during

the past three years; and (v) be able to read and understand fundamental financial statements, including the Company's balance sheet, income statement, and cash flow statement. At least one member of the Audit Committee shall have past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities and shall meet any other applicable legislative or regulatory requirements with respect to financial expertise. The duties and responsibilities of a member of the Audit Committee are in addition to those duties set out for a member of the Board of Directors.

- B. The Board shall appoint the members of the Audit Committee at the Company's annual organizational meeting. The members of the Audit Committee shall serve until their successors are appointed and duly qualified. The Board shall have the power at any time to change the membership of the Audit Committee and to fill vacancies in it, subject to such new member(s) satisfying the independence, experience and financial expertise requirements referred to above. The term of membership is one year, with reappointment staggered to provide continuity.

### **III. MEETINGS**

- A. The Audit Committee shall meet at least quarterly, and shall have the authority to convene additional meetings as circumstances dictate. A majority of the members of the Audit Committee shall be required to constitute a quorum. As part of its job to foster open communication, the Audit Committee shall meet periodically with management, internal auditors and the Public Accountant in separate executive sessions to discuss any matters that the Audit Committee or any of these groups believe should be discussed separately. The Audit Committee may ask members of management or others to attend meetings and provide pertinent information as necessary.
- B. The Audit Committee or at least the Chair of the Audit Committee should communicate with the Public Accountant and management quarterly to review the Company's financial statements. This review should be done prior to the filing of the Company's quarterly reports on Form 10-Q and annual reports on Form 10-K. This review should include a discussion of any significant adjustments, management judgments and accounting estimates, significant new accounting policies, and disagreements with management. In addition, prior to the Company's public release of earnings, subsequent events, if any, discussed at management's Disclosure Certification Committee meeting will be brought to the attention of the Audit Committee Chair.

### **IV. COMMITTEE AUTHORITY AND RESPONSIBILITIES**

In carrying out its oversight responsibilities, the Audit Committee shall undertake those tasks that, in its judgment, would most effectively contribute and implement the purposes of the Audit Committee. The Audit Committee is authorized to carry out responsibilities in the following areas:

## A. Corporate Governance and Internal Controls

1. The Audit Committee shall have the authority, to the extent it deems necessary or appropriate, to retain special legal, accounting or other consultants to advise the Audit Committee and carry out its duties, and to conduct or authorize investigations into any matters within its scope of responsibilities. The Company shall provide for appropriate funding, as determined by the Audit Committee, for payment of compensation to any legal counsel, accountant or other adviser employed by the Audit Committee.
2. The Audit Committee shall have the sole authority for the appointment or replacement of any Public Accountant. The Audit Committee shall review and approve the annual audit scope and fees of the Public Accountant. The Audit Committee shall be directly responsible for the oversight of the work of the Public Accountant, including resolution of disagreements between management and the Public Accountant regarding financial reporting, for the purpose of preparing or issuing an audit report or related work. The Public Accountant shall report directly to the Audit Committee.
3. The Audit Committee shall oversee the independence of the Public Accountant by limiting and controlling other proposed services. The Audit Committee shall pre-approve all auditing services and permissible non-audit services (including the fees and terms thereof), subject to the *de minimis* exceptions for non-audit services described in Section 10A(i)(1)(B) of the Securities Exchange Act of 1934, as set forth in Appendix D hereto; to be performed for the Company by the Public Accountant. The Audit Committee may delegate to one or more of its members the authority to grant pre-approvals of non-audit services, provided that decisions of such delegates shall be presented to the full Audit Committee at its next scheduled meeting.
4. The Audit Committee shall make regular reports to the Board of Directors about Audit Committee activities and issues that arise with respect to the quality or integrity of the Company's financial statements, compliance with legal or regulatory requirements, the performance and independence of the Public Accountant, and the performance of the internal audit function.
5. The Audit Committee shall review and reassess the adequacy of this Charter annually and recommend any proposed changes to the Board of Directors for approval.
6. The Audit Committee shall recommend to the Board policies for the Company's hiring of employees or former employees of the Public Accountants who were engaged in any capacity in the audit of the Company during the preceding one-year period.
7. The Audit Committee shall establish procedures for (a) the receipt, retention and treatment of complaints received by the Company regarding accounting, internal accounting controls or auditing matters; and (b) the confidential and anonymous

submission by employees of the Company, of concerns regarding questionable accounting or auditing matters or management fraud.

8. The Audit Committee shall discuss with management and the Public Accountant, any correspondence with regulators or governmental agencies and any employee complaints or published reports, which raise material issues regarding the Company's financial statements or accounting policies.
9. The Audit Committee shall review with the Public Accountant, the Company's financial and accounting personnel the adequacy and effectiveness of the accounting and financial controls of the Company, and elicit any recommendations for the improvement of such internal control procedures or particular areas where new or more detailed controls or procedures are desirable or necessary.
10. The Audit Committee shall ensure that the Company maintains an internal audit function, as described in the Internal Audit section of this Charter.
11. The Audit Committee shall review the internal audit function of the Company, including the independence, competence, staffing adequacy and authority of the internal auditor, the reporting relationships among the internal auditor, management and the Audit Committee, the internal audit reporting obligations, the annual audit program and scope, and the coordination of the audit program with the Public Accountant.
12. The Audit Committee shall consider and review with management, the Public Accountant and the Company's Senior Auditor the effectiveness of the Company's internal controls over annual and interim financial reporting, including information technology security and control. These controls shall provide reasonable assurance of the integrity of the financial information and assurance that the Company's reported financial results are presented fairly in conformity with GAAP.
13. Approve all related party transactions, as more specifically described in Appendix E.

## **B. Financial Reporting**

1. The Audit Committee shall review with management and the Public Accountant, the annual audited financial statements, including major issues regarding accounting and auditing principles and practices, and the adequacy of internal controls that could significantly affect the financial statements. This review shall consider critical accounting policies, alternative accounting treatments discussed with management and the registered public accounting firm's preferred treatment, qualitative judgments about quality of accounting policies, disputes or disagreement with management and any major accounting policy changes. The Audit Committee shall review and discuss with management and the Public Accountant any accounting adjustments that were noted or proposed by the Public Accountant but were passed (as immaterial or otherwise). The Committee will have final authority to resolve disagreements between management and the Public Accountant.

2. The Audit Committee shall review with management and the Public Accountant, other written communication between the Public Accountant and management, including management representation letters, reports on observations and recommendations on internal controls, schedules of material adjustments and reclassifications proposed and an indication of those not recorded, engagement letters and independence letters.
3. The Audit Committee shall review with management and the Public Accountant, (a) the Company's quarterly press releases regarding results of operations prior to their release, and (b) the quarterly and annual financial statements prior to the filing of the Company's quarterly reports on Form 10-Q and annual reports on Form 10-K, including the results of the Public Accountant's reviews of quarterly and annual financial statements.
4. The Audit Committee shall review disclosures made by the Company's Chief Executive Officer and Chief Financial Officer regarding compliance with their respective certification obligations under the Sarbanes-Oxley Act of 2002 and the rules promulgated thereunder, including the Company's disclosure controls and procedures and internal controls for financial reporting and evaluations thereof.

### **C. External Audit**

The Company is to have an annual certified audit by a registered public accounting firm of certified public accountants.

1. The Audit Committee shall review the Public Accountant's proposed audit scope and approach, including coordination of the audit effort with the internal audit function.
2. The Audit Committee shall obtain and review a report from the Public Accountant at least annually regarding the Public Accountant's internal quality-control procedures, any material issues raised by the most recent quality-control review, or peer review, or by any inquiry or investigation by governmental or professional authorities within the preceding five years respecting one or more independent audits carried out by the Public Accountant, and any steps taken to deal with any such issues.
3. The Audit Committee shall obtain and review a report from the Public Accountant at least annually, delineating all relationships between the Public Accountant and the Company consistent with Independence Standards Board Standard No. 1. The Audit Committee shall engage in a dialogue with the Public Accountant with respect to any disclosed relationships or services that may have an impact the objectivity and independence of the Public Accountant and shall take, or recommend that the full Board of Directors take, appropriate action to oversee the independence of the Public Accountant.
4. The Audit Committee shall evaluate the qualifications, performance and independence of the Public Accountant, including a review and evaluation of the lead

partner of the Public Accountant, taking into account the opinions of management and the Company's internal auditors and presenting its conclusions to the full Board of Directors.

5. The Audit Committee shall ensure that the lead audit partner of the Public Accountant and the audit partner responsible for reviewing the audit are rotated at least every five years as required by the Sarbanes-Oxley Act of 2002, and further consider rotation of the Public Accountant itself.
6. The Audit Committee shall meet, at least annually, with the Public Accountant to discuss such things as the audit role, audit functions, scope of audits, findings, recommendations, corrective actions, and other relevant matters.
7. The Audit Committee shall review any reports of the Public Accountant mandated by Section 10A of the Securities Exchange Act of 1934 and obtain from the Public Accountant any information with respect to illegal acts in accordance with Section 10A. If no reports are received, the Audit Committee shall obtain from the Public Accountant an assurance that Section 10A of the Act has not been implicated.

#### **D. Internal Audit**

The Internal Audit function is responsible for evaluating the adequacy, effectiveness and efficiency of the Company's systems of internal controls and the quality of ongoing operations. The Company is to have one person designated as the Senior Auditor, who shall have adequate technical training and proficiency to manage the internal audit function.

1. The Audit Committee is responsible for the retaining, reviewing and compensating of the Senior Auditor. The Chair of the Audit Committee shall consult with the President and Chief Executive Officer of the Company, at least annually, on the performance of the Senior Auditor.
2. The Audit Committee shall review with the Public Accountant, management and the Senior Auditor, the internal audit department functions and organizational structure, annual budget, staffing, and any recommended changes in the planned scope of the internal audit plan.
3. The Audit Committee shall ensure there are no unjustified restrictions or limitations, which have an impact or impairment in the scope of the internal audit.
4. The Audit Committee shall review internal audit reports to management, which includes the audit scope, results and recommendations for each audit conducted. The review shall include the respective impact on internal controls, the control environment and the overall effectiveness and efficiency of the Company's operations.

5. The Audit Committee, through designation to the Senior Auditor, is responsible for the oversight and management of internal audit outsourcing engagements. These engagements include, but are not limited to, loan review, information systems and external penetration testing. Reporting on the scope, results and recommendations of each audit performed will be directed through the Senior Auditor and the Audit Committee.

#### **E. Qualified Legal Compliance Committee**

1. The Audit Committee shall establish written procedures for the confidential receipt, retention and consideration of evidence of a material violation of an applicable United States federal or state securities law, a material breach of fiduciary duty arising under United States federal or state law, or a similar material violation of any United States federal or state law by the Company or by any officer, director, employee or agent of the Company (each, a “Material Violation”) that is reported to the Committee by the Company’s chief legal officer (or the equivalent thereof) or other legal advisors.
2. The Audit Committee shall inform the Company’s chief legal officer and chief executive officer (or the equivalents thereof) of any report of evidence of a Material Violation that is reported to the Committee by the Company’s chief legal officer (or the equivalent thereof) or other legal advisor.
3. The Audit Committee shall determine whether an investigation is necessary regarding any report of evidence of a Material Violation that is reported to the Committee by the Company’s chief legal officer (or the equivalent thereof) or other legal advisors.
4. If the Audit Committee determines an investigation is necessary or appropriate the Audit Committee shall: (i) notify the full Board; (ii) initiate an investigation, which may be conducted either by the chief legal officer (or the equivalent thereof) or by outside attorneys; and (iii) retain such additional expert personnel as the Committee deems necessary. At the conclusion of any such investigation the Audit Committee shall: (i) recommend, by majority vote, that the Company implement an appropriate response to evidence of a Material Violation; and (ii) inform the chief legal officer and the chief executive officer (or the equivalents thereof) and the Board of the results of any such investigation and the appropriate remedial measures to be adopted.
5. Acting by majority vote, the Audit Committee shall take all other appropriate actions, including notifying the Commission, to respond to evidence of a Material Violation that is reported to the Committee by the Company’s chief legal officer (or the equivalent thereof) or other legal advisors in the event that the Company fails in any material respect to implement an appropriate response that the Committee has recommended the Company to take.

***Approved by the Monroe Bancorp and Monroe Bank Board of Directors on April 30, 2009.***

**Nasdaq Marketplace Rule 4200(a)(15)**

(a)(15) “Independent director” means a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship, which, in the opinion of the company’s board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. The following persons shall not be considered independent:

(A) a director who is, or at any time during the past three years was, employed by the company or by any parent or subsidiary of the company;

(B) a director who accepted or who has a Family Member<sup>1</sup> who accepted any compensation from the company or any parent or subsidiary of the company in excess of \$100,000 during the current or any of the past three fiscal years, other than the following:

(i) compensation for board or board committee service;

(ii) compensation arising solely from investments in the company’s securities;

(iii) compensation paid to a Family Member who is a non-executive employee of the company or a parent or subsidiary of the company;

(iv) benefits under a tax-qualified retirement plan, or non-discretionary compensation; or

(v) loans permitted under Section 13(k) of the Act. Provided, however, that audit committee members are subject to additional, more stringent requirements under rule 4350(d).

(C) a director who is a Family Member of an individual who is, or at any time during the past three years was, employed by the company or by any parent or subsidiary of the company as an executive officer;

(D) a director who is, or has a Family Member who is, a partner in, or a controlling shareholder or an executive officer of, any organization to which the company made, or from which the company received, compensation for property or services in the current or any of the past three fiscal years that exceed 5% of the recipient’s consolidated gross revenues for that year, or \$200,000, whichever is more, other than the following:

(i) compensation arising solely from investments in the company’s securities; or

(ii) compensation under non-discretionary charitable contribution matching programs.

(E) a director of the listed company who is, or has a Family Member who is, employed as an executive officer of another entity where at any time during the past three

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<sup>1</sup> “Family Member” is defined by Nasdaq for this purpose to include a person’s spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person’s home. Rule 4200(a)(14).

years any of the executive officers of the listed company serve on the compensation committee of such other entity; or

(F) a director who is, or has a Family Member who is, a current partner of the company's outside auditor, or was a partner or employee of the company's outside auditor who worked on the company's audit at any time during any of the past three years.

(G) In the case of an investment company, in lieu of paragraphs (A)-(F), a director who is an "interested person" of the company as defined in section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee.

**Rule 10A-3(b)(1) under the Securities Exchange Act of 1934**

(b)(1) Independence.

(i) Each member of the audit committee must be a member of the board of directors of the listed issuer, and must otherwise be independent; provided that, where a listed issuer is one of two dual holding companies, those companies may designate one audit committee for both companies so long as each member of the audit committee is a member of the board of directors of at least one of such dual holding companies.

(ii) Independence requirements for non-investment company issuers. In order to be considered to be independent for purposes of this paragraph (b)(1), a member of an audit committee of a listed issuer that is not an investment company may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee:

(A) Accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer or any subsidiary thereof, provided that, unless the rules of the national securities exchange or national securities association provide otherwise, compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the listed issuer (provided that such compensation is not contingent in any way on continued service); or

(B) Be an affiliated person of the issuer or any subsidiary thereof.

**12 C.F.R. § 205.2(1)**

A qualified legal compliance committee:

- (1) Consists of at least one member of the issuer's audit committee (or, if the issuer has no audit committee, one member from an equivalent committee of independent directors) and two or more members of the issuer's board of directors who are not employed, directly or indirectly, by the issuer and who are not, in the case of a registered investment company, "interested persons" as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)).

**Section 10A(i)(1)(B) under the Securities Exchange Act of 1934**

**i. Preapproval Requirements.**

**B. De minimus exception.**

The preapproval requirement under subparagraph (A) is waived with respect to the provision of non-audit services for an issuer, if--

- i. the aggregate amount of all such non-audit services provided to the issuer constitutes not more than 5 percent of the total amount of revenues paid by the issuer to its auditor during the fiscal year in which the nonaudit services are provided;
- ii. such services were not recognized by the issuer at the time of the engagement to be non-audit services; and
- iii. such services are promptly brought to the attention of the audit committee of the issuer and approved prior to the completion of the audit by the audit committee or by 1 or more members of the audit committee who are members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

**§ 229.404 (Item 404) Transactions with related persons, promoters and certain control persons.**

(a) *Transactions with related persons.* Describe any transaction, since the beginning of the registrant's last fiscal year, or any currently proposed transaction, in which the registrant was or is to be a participant and the amount involved exceeds \$120,000, and in which any related person had or will have a direct or indirect material interest. Disclose the following information regarding the transaction:

- (1) The name of the related person and the basis on which the person is a related person.
- (2) The related person's interest in the transaction with the registrant, including the related person's position(s) or relationship(s) with, or ownership in, a firm, corporation, or other entity that is a party to, or has an interest in, the transaction.
- (3) The approximate dollar value of the amount involved in the transaction.
- (4) The approximate dollar value of the amount of the related person's interest in the transaction, which shall be computed without regard to the amount of profit or loss.
- (5) In the case of indebtedness, disclosure of the amount involved in the transaction shall include the largest aggregate amount of principal outstanding during the period for which disclosure is provided, the amount thereof outstanding as of the latest practicable date, the amount of principal paid during the periods for which disclosure is provided, the amount of interest paid during the period for which disclosure is provided, and the rate or amount of interest payable on the indebtedness.
- (6) Any other information regarding the transaction or the related person in the context of the transaction that is material to investors in light of the circumstances of the particular transaction.

*Instructions to Item 404(a).*

1. For the purposes of paragraph (a) of this Item, the term related person means:
  - a. Any person who was in any of the following categories at any time during the specified period for which disclosure under paragraph (a) of this Item is required:
    - i. Any director or executive officer of the registrant;
    - ii. Any nominee for director, when the information called for by paragraph (a) of this Item is being presented in a proxy or information statement relating to the election of that nominee for director; or
    - iii. Any immediate family member of a director or executive officer of the registrant, or of any nominee for director when the information called for by paragraph (a) of this Item is being presented in a proxy or information statement relating to the election of that nominee for director, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law,

father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of such director, executive officer or nominee for director, and any person (other than a tenant or employee) sharing the household of such director, executive officer or nominee for director; and

b. Any person who was in any of the following categories when a transaction in which such person had a direct or indirect material interest occurred or existed:

i. A security holder covered by Item 403(a) (§229.403(a)); or

ii. Any immediate family member of any such security holder, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of such security holder, and any person (other than a tenant or employee) sharing the household of such security holder.

2. For purposes of paragraph (a) of this Item, a transaction includes, but is not limited to, any financial transaction, arrangement or relationship (including any indebtedness or guarantee of indebtedness) or any series of similar transactions, arrangements or relationships.

3. The amount involved in the transaction shall be computed by determining the dollar value of the amount involved in the transaction in question, which shall include:

a. In the case of any lease or other transaction providing for periodic payments or installments, the aggregate amount of all periodic payments or installments due on or after the beginning of the registrant's last fiscal year, including any required or optional payments due during or at the conclusion of the lease or other transaction providing for periodic payments or installments; and

b. In the case of indebtedness, the largest aggregate amount of all indebtedness outstanding at any time since the beginning of the registrant's last fiscal year and all amounts of interest payable on it during the last fiscal year.

4. In the case of a transaction involving indebtedness:

a. The following items of indebtedness may be excluded from the calculation of the amount of indebtedness and need not be disclosed: Amounts due from the related person for purchases of goods and services subject to usual trade terms, for ordinary business travel and expense payments and for other transactions in the ordinary course of business;

b. Disclosure need not be provided of any indebtedness transaction for the related persons specified in Instruction 1.b. to paragraph (a) of this Item; and

c. If the lender is a bank, savings and loan association, or broker-dealer extending credit under Federal Reserve Regulation T (12 CFR part 220) and the loans are not disclosed as nonaccrual, past due, restructured or potential problems (see Item III.C.1. and 2. of Industry Guide 3, Statistical Disclosure by Bank Holding Companies (17 CFR 229.802(c))), disclosure under paragraph (a) of this Item may consist of a statement, if such is the case, that the loans to such persons:

i. Were made in the ordinary course of business;

ii. Were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable loans with persons not related to the lender; and

iii. Did not involve more than the normal risk of collectibility or present other unfavorable features.

5.a. Disclosure of an employment relationship or transaction involving an executive officer and any related compensation solely resulting from that employment relationship or transaction need not be provided pursuant to paragraph (a) of this Item if:

i. The compensation arising from the relationship or transaction is reported pursuant to Item 402 (§229.402); or

ii. The executive officer is not an immediate family member (as specified in Instruction 1 to paragraph (a) of this Item) and such compensation would have been reported under Item 402 (§229.402) as compensation earned for services to the registrant if the executive officer was a named executive officer as that term is defined in Item 402(a)(3) (§229.402(a)(3)), and such compensation had been approved, or recommended to the board of directors of the registrant for approval, by the compensation committee of the board of directors (or group of independent directors performing a similar function) of the registrant.

b. Disclosure of compensation to a director need not be provided pursuant to paragraph (a) of this Item if the compensation is reported pursuant to Item 402(k) (§229.402(k)).

6. A person who has a position or relationship with a firm, corporation, or other entity that engages in a transaction with the registrant shall not be deemed to have an indirect material interest within the meaning of paragraph (a) of this Item where:

a. The interest arises only:

i. From such person's position as a director of another corporation or organization that is a party to the transaction; or

ii. From the direct or indirect ownership by such person and all other persons specified in Instruction 1 to paragraph (a) of this Item, in the aggregate, of less than a ten percent equity interest in another person (other than a partnership) which is a party to the transaction; or

iii. From both such position and ownership; or

b. The interest arises only from such person's position as a limited partner in a partnership in which the person and all other persons specified in Instruction 1 to paragraph (a) of this Item, have an interest of less than ten percent, and the person is not a general partner of and does not hold another position in the partnership.

7. Disclosure need not be provided pursuant to paragraph (a) of this Item if:

a. The transaction is one where the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

b. The transaction involves services as a bank depository of funds, transfer agent, registrar, trustee under a trust indenture, or similar services; or

c. The interest of the related person arises solely from the ownership of a class of equity securities of the registrant and all holders of that class of equity securities of the registrant received the same benefit on a pro rata basis.

(b) *Review, approval or ratification of transactions with related persons.* (1) Describe the registrant's policies and procedures for the review, approval, or ratification of any transaction required to be reported under paragraph (a) of this Item. While the material features of such policies and procedures will vary depending on the particular circumstances, examples of such features may include, in given cases, among other things:

(i) The types of transactions that are covered by such policies and procedures;

(ii) The standards to be applied pursuant to such policies and procedures;

(iii) The persons or groups of persons on the board of directors or otherwise who are responsible for applying such policies and procedures; and

(iv) A statement of whether such policies and procedures are in writing and, if not, how such policies and procedures are evidenced.

(2) Identify any transaction required to be reported under paragraph (a) of this Item since the beginning of the registrant's last fiscal year where such policies and procedures did not require review, approval or ratification or where such policies and procedures were not followed.

*Instruction to Item 404(b).*

Disclosure need not be provided pursuant to this paragraph regarding any transaction that occurred at a time before the related person became one of the enumerated persons in Instruction 1.a.i., ii., or iii. to Item 404(a) if such transaction did not continue after the related person became one of the enumerated persons in Instruction 1.a.i., ii., or iii. to Item 404(a).

(c) *Promoters and certain control persons.* (1) Registrants that are filing a registration statement on Form S-1 or Form SB-2 under the Securities Act (§239.11 or §239.10 of this chapter) or on Form 10 or Form 10-SB under the Exchange Act (§249.210 or §249.210b of this chapter) and that had a promoter at any time during the past five fiscal years shall:

(i) State the names of the promoter(s), the nature and amount of anything of value (including money, property, contracts, options or rights of any kind) received or to be received by each promoter, directly or indirectly, from the registrant and the nature and amount of any assets, services or other consideration therefore received or to be received by the registrant; and

(ii) As to any assets acquired or to be acquired by the registrant from a promoter, state the amount at which the assets were acquired or are to be acquired and the principle followed or to be followed in determining such amount, and identify the persons making the determination and their relationship, if any, with the registrant or any promoter. If the assets were acquired by the promoter within two years prior to their transfer to the registrant, also state the cost thereof to the promoter.

(2) Registrants shall provide the disclosure required by paragraphs (c)(1)(i) and (c)(1)(ii) of this Item as to any person who acquired control of a registrant that is a shell company, or any person that is part of a group, consisting of two or more persons that agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of a registrant, that acquired control of a registrant that is a shell company. For purposes of this Item, *shell company* has the same meaning as in Rule 405 under the Securities Act (17 CFR 230.405) and Rule 12b-2 under the Exchange Act (17 CFR 240.12b-2).

*Instructions to Item 404.*

1. If the information called for by this Item is being presented in a registration statement filed pursuant to the Securities Act or the Exchange Act, information shall be given for the periods specified in the Item and, in addition, for the two fiscal years preceding the registrant's last fiscal year, unless the information is being incorporated by reference into a registration statement on Form S-4 (17 CFR 239.25), in which case, information shall be given for the periods specified in the Item.
2. A foreign private issuer will be deemed to comply with this Item if it provides the information required by Item 7.B. of Form 20-F (17 CFR 249.220f) with more detailed information provided if otherwise made publicly available or required to be disclosed by the issuer's home jurisdiction or a market in which its securities are listed or traded.