

(II) THE ISSUER AND ANY PREDECESSOR DURING THE PAST THREE FISCAL YEARS HAVE HAD AVERAGE NET EARNINGS, DETERMINED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRACTICES, WHICH:

1. ARE APPLICABLE TO ALL SECURITIES WITHOUT A FIXED MATURITY OR A FIXED INTEREST OR DIVIDEND PROVISION OUTSTANDING AT THE DATE THE REGISTRATION STATEMENT IS FILED AND EQUAL AT LEAST 5 PERCENT OF THE AMOUNT OF THE OUTSTANDING SECURITIES, AS MEASURED BY THE MAXIMUM OFFERING PRICE OR THE MARKET PRICE ON A DAY SELECTED BY THE REGISTRANT, WITHIN 30 DAYS BEFORE THE DATE OF FILING THE REGISTRATION STATEMENT, WHICHEVER IS HIGHER, OR BOOK VALUE ON A DAY, SELECTED BY THE REGISTRANT WITHIN 90 DAYS OF THE DATE OF FILING THE REGISTRATION STATEMENT, TO THE EXTENT THAT THERE IS NEITHER A READILY DETERMINABLE MARKET PRICE NOR A CASH OFFERING PRICE; OR

2. IF THE ISSUER AND ANY PREDECESSOR HAS NOT HAD ANY SECURITY OF THE TYPE SPECIFIED IN PARAGRAPH (1) (II) 1. OF THIS SUBSECTION OUTSTANDING FOR THREE FULL FISCAL YEARS, EQUAL AT LEAST 5 PERCENT OF THE AMOUNT, AS MEASURED IN PARAGRAPH (1) (II) 1. OF THIS SUBSECTION, OF ALL SECURITIES WHICH WILL BE OUTSTANDING IF ALL THE SECURITIES BEING OFFERED OR PROPOSED TO BE OFFERED, WHETHER OR NOT THEY ARE PROPOSED TO BE REGISTERED OR OFFERED IN THE STATE, ARE ISSUED AND;

(2) ANY SECURITY, OTHER THAN A CERTIFICATE OF INTEREST OR PARTICIPATION IN AN OIL, GAS, OR MINING TITLE OR LEASE OR IN PAYMENTS OUT OF PRODUCTION UNDER SUCH A TITLE OR LEASE, REGISTERED FOR NONISSUER DISTRIBUTION IF:

(I) ANY SECURITY OF THE SAME CLASS HAS EVER BEEN REGISTERED UNDER THIS TITLE; OR

(II) THE SECURITY BEING REGISTERED WAS ORIGINALLY ISSUED PURSUANT TO AN EXEMPTION UNDER THIS TITLE.

(B) INFORMATION TO BE CONTAINED IN REGISTRATION STATEMENT; ACCOMPANYING DOCUMENTS.

A REGISTRATION STATEMENT UNDER THIS SECTION SHALL CONTAIN THE FOLLOWING INFORMATION AND BE ACCOMPANIED BY THE FOLLOWING DOCUMENTS, IN ADDITION TO THE INFORMATION SPECIFIED IN §11-507(A) OF THIS SUBTITLE AND THE CONSENT TO SERVICE OF PROCESS REQUIRED BY §11-802(A) OF THIS TITLE:

(1) A STATEMENT DEMONSTRATING ELIGIBILITY FOR REGISTRATION BY NOTIFICATION;

(2) WITH RESPECT TO THE ISSUER AND ANY