

## § 230.172

this section. All such statements shall be in writing.

[33 FR 7682, May 24, 1968]

### § 230.172 Delivery of prospectuses.

(a) *Sending confirmations and notices of allocations.* After the effective date of a registration statement, the following are exempt from the provisions of section 5(b)(1) of the Act if the conditions set forth in paragraph (c) of this section are satisfied:

(1) Written confirmations of sales of securities in an offering pursuant to a registration statement that contain information limited to that called for in Rule 10b-10 under the Securities Exchange Act of 1934 (§240.10b-10 of this chapter) and other information customarily included in written confirmations of sales of securities, which may include notices provided pursuant to Rule 173 (§230.173); and

(2) Notices of allocation of securities sold or to be sold in an offering pursuant to the registration statement that may include information identifying the securities (including the CUSIP number) and otherwise may include only information regarding pricing, allocation and settlement, and information incidental thereto.

(b) *Transfer of the security.* Any obligation under section 5(b)(2) of the Act to have a prospectus that satisfies the requirements of section 10(a) of the Act precede or accompany the carrying or delivery of a security in a registered offering is satisfied if the conditions in paragraph (c) of this section are met.

(c) *Conditions.* (1) The registration statement relating to the offering is effective and is not the subject of any pending proceeding or examination under section 8(d) or 8(e) of the Act;

(2) Neither the issuer, nor an underwriter or participating dealer is the subject of a pending proceeding under section 8A of the Act in connection with the offering; and

(3) The issuer has filed with the Commission a prospectus with respect to the offering that satisfies the requirements of section 10(a) of the Act or the issuer will make a good faith and reasonable effort to file such a prospectus within the time required under Rule 424 (§230.424) and, in the event that the issuer fails to file timely such a pro-

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spectus, the issuer files the prospectus as soon as practicable thereafter.

(4) The condition in paragraph (c)(3) of this section shall not apply to transactions by dealers requiring delivery of a final prospectus pursuant to section 4(3) of the Act.

(d) *Exclusions.* This section shall not apply to any:

(1) Offering of any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*);

(2) Offering of any business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48));

(3) A business combination transaction as defined in Rule 165(f)(1) (§230.165(f)(1)); or

(4) Offering registered on Form S-8 (§239.16b of this chapter).

[70 FR 44808, Aug. 3, 2005]

### § 230.173 Notice of registration.

(a) In a transaction that represents a sale by the issuer or an underwriter, or a sale where there is not an exclusion or exemption from the requirement to deliver a final prospectus meeting the requirements of section 10(a) of the Act pursuant to section 4(3) of the Act or Rule 174 (§230.174), each underwriter or dealer selling in such transaction shall provide to each purchaser from it, not later than two business days following the completion of such sale, a copy of the final prospectus or, in lieu of such prospectus, a notice to the effect that the sale was made pursuant to a registration statement or in a transaction in which a final prospectus would have been required to have been delivered in the absence of Rule 172 (§230.172).

(b) If the sale was by the issuer and was not effected by or through an underwriter or dealer, the responsibility to send a prospectus, or in lieu of such prospectus, such notice as set forth in paragraph (a) of this section, shall be the issuer's.

(c) Compliance with the requirements of this section is not a condition to reliance on Rule 172.

(d) A purchaser may request from the person responsible for sending a notice a copy of the final prospectus if one has not been sent.

(e) After the effective date of the registration statement with respect to an offering, notices as set forth in paragraph (a) of this section, are exempt from the provisions of section 5(b)(1) of the Act.

(f) *Exclusions.* This section shall not apply to any:

(1) Transaction solely between brokers or dealers in reliance on Rule 153 (§ 230.153);

(2) Offering of any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*);

(3) Offering of any business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48));

(4) A business combination transaction as defined in Rule 165(f)(1) (§ 230.165(f)(1)); or

(5) Offering registered on Form S-8 (§ 239.16b of this chapter).

[70 FR 44809, Aug. 3, 2005]

**§ 230.174 Delivery of prospectus by dealers; exemptions under section 4(3) of the Act.**

The obligations of a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transactions) to deliver a prospectus in transactions in a security as to which a registration statement has been filed taking place prior to the expiration of the 40- or 90-day period specified in section 4(3) of the Act after the effective date of such registration statement or prior to the expiration of such period after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter after such effective date, whichever is later, shall be subject to the following provisions:

(a) No prospectus need be delivered if the registration statement is on Form F-6 (§ 239.36 of this chapter).

(b) No prospectus need be delivered if the issuer is subject, immediately prior to the time of filing the registration statement, to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934.

(c) Where a registration statement relates to offerings to be made from time to time no prospectus need be de-

livered after the expiration of the initial prospectus delivery period specified in section 4(3) of the Act following the first bona fide offering of securities under such registration statement.

(d) If (1) the registration statement relates to the security of an issuer that is not subject, immediately prior to the time of filing the registration statement, to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, and (2) as of the offering date, the security is listed on a registered national securities exchange or authorized for inclusion in an electronic inter-dealer quotation system sponsored and governed by the rules of a registered securities association, no prospectus need be delivered after the expiration of twenty-five calendar days after the offering date. For purposes of this provision, the term *offering date* refers to the later of the effective date of the registration statement or the first date on which the security was bona fide offered to the public.

(e) Notwithstanding the foregoing, the period during which a prospectus must be delivered by a dealer shall be:

(1) As specified in section 4(3) of the Act if the registration statement was the subject of a stop order issued under section 8 of the Act; or

(2) As the Commission may provide upon application or on its own motion in a particular case.

(f) Nothing in this section shall affect the obligation to deliver a prospectus pursuant to the provisions of section 5 of the Act by a dealer who is acting as an underwriter with respect to the securities involved or who is engaged in a transaction as to securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer or by or through an underwriter.

(g) If the registration statement relates to an offering of securities of a "blank check company," as defined in Rule 419 under the Act (17 CFR 230.419), the statutory period for prospectus delivery specified in section 4(3) of the Act shall not terminate until 90 days after the date funds and securities are released from the escrow or trust account pursuant to Rule 419 under the Act.