

**§ 230.165 Offers made in connection with a business combination transaction.**

PRELIMINARY NOTE: This section is available only to communications relating to business combinations. The exemption does not apply to communications that may be in technical compliance with this section, but have the primary purpose or effect of conditioning the market for another transaction, such as a capital-raising or resale transaction.

(a) *Communications before a registration statement is filed.* Notwithstanding section 5(c) of the Act (15 U.S.C. 77e(c)), the offeror of securities in a business combination transaction to be registered under the Act may make an offer to sell or solicit an offer to buy those securities from and including the first public announcement until the filing of a registration statement related to the transaction, so long as any written communication (other than non-public communications among participants) made in connection with or relating to the transaction (*i.e.*, prospectus) is filed in accordance with § 230.425 and the conditions in paragraph (c) of this section are satisfied.

(b) *Communications after a registration statement is filed.* Notwithstanding section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)), any written communication (other than non-public communications among participants) made in connection with or relating to a business combination transaction (*i.e.*, prospectus) after the filing of a registration statement related to the transaction need not satisfy the requirements of section 10 (15 U.S.C. 77j) of the Act, so long as the prospectus is filed in accordance with § 230.424 or § 230.425 and the conditions in paragraph (c) of this section are satisfied.

(c) *Conditions.* To rely on paragraphs (a) and (b) of this section:

(1) Each prospectus must contain a prominent legend that urges investors to read the relevant documents filed or to be filed with the Commission because they contain important information. The legend also must explain to investors that they can get the documents for free at the Commission's web site and describe which documents are available free from the offeror; and

(2) In an exchange offer, the offer must be made in accordance with the applicable tender offer rules (§§ 240.14d-1 through 240.14e-8 of this chapter); and, in a transaction involving the vote of security holders, the offer must be made in accordance with the applicable proxy or information statement rules (§§ 240.14a-1 through 240.14a-101 and §§ 240.14c-1 through 240.14c-101 of this chapter).

(d) *Applicability.* This section is applicable not only to the offeror of securities in a business combination transaction, but also to any other participant that may need to rely on and complies with this section in communicating about the transaction.

(e) *Failure to file or delay in filing.* An immaterial or unintentional failure to file or delay in filing a prospectus described in this section will not result in a violation of section 5(b)(1) or (c) of the Act (15 U.S.C. 77e(b)(1) and (c)), so long as:

(1) A good faith and reasonable effort was made to comply with the filing requirement; and

(2) The prospectus is filed as soon as practicable after discovery of the failure to file.

(f) *Definitions.*

(1) A *business combination transaction* means any transaction specified in § 230.145(a) or exchange offer;

(2) A *participant* is any person or entity that is a party to the business combination transaction and any persons authorized to act on their behalf; and

(3) *Public announcement* is any oral or written communication by a participant that is reasonably designed to, or has the effect of, informing the public or security holders in general about the business combination transaction.

[64 FR 61450, Nov. 10, 1999]

**§ 230.166 Exemption from section 5(c) for certain communications in connection with business combination transactions.**

PRELIMINARY NOTE: This section is available only to communications relating to business combinations. The exemption does not apply to communications that may be in technical compliance with this section, but have the primary purpose or effect of conditioning the market for another transaction, such as a capital-raising or resale transaction.