

is offered or sold pursuant to arrangements for the purchase and sale of fractional interests among the person entitled to such fractional interests for the purpose of combining such interests into whole shares, and for the sale of such number of whole shares as may be necessary to compensate security holders for any remaining fractional interests not so combined, notwithstanding that the issuer or an affiliate of the issuer may act on behalf of or as agent for the security holders in effecting such transactions.

(Sec. 4, 48 Stat. 77; 15 U.S.C. 77d)

[30 FR 2657, Mar. 2, 1965]

§ 230.153 Definition of “preceded by a prospectus”, as used in section 5(b)(2), in relation to certain transactions.

(a) The term *preceded by a prospectus*, as used in section 5(b)(2) of the Securities Act of 1933 (48 Stat. 77; 15 U.S.C. 77e(b)(2), as amended, in respect of any requirement of delivery of a prospectus to a member of a national securities exchange, on account of a transaction in a security effected on such exchange, shall mean delivery, prior to such transaction, of copies of a prospectus descriptive of such security and meeting the requirements of section 10(a) (48 Stat. 81, sec. 205, 48 Stat. 906; 15 U.S.C. 77j) to such exchange by the issuer or any underwriter, for the purpose of redelivery to members of such exchange upon their request: *Provided*, That as to any transaction occurring prior to the expiration of forty days after the effective date of the registration statement or the expiration of forty days 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 (exclusive of the time during which a stop order issued under section 8 is in effect as to such security):

(1) Such exchange shall theretofore have requested of the issuer or, if such requests shall not have been compiled with, of a *principal underwriter* (as that term is defined in § 230.405), from time to time, such number of copies of such prospectus as may have appeared reasonably necessary to comply with the requests of its members, and shall have

delivered from its supply on hand a copy to any member theretofore making a written request therefor, and

(2) The issuer or any underwriter shall theretofore have furnished such exchange with such reasonable number of copies of such prospectus as may have been requested by the exchange for the purpose stated above.

(b) The term *national securities exchange*, as used herein shall mean a securities exchange registered as a national securities exchange under the Securities Exchange Act of 1934 (48 Stat. 881; 15 U.S.C. Chapter 2B), as amended.

[2 FR 1076, May 26, 1937, as amended at 19 FR 6737, Oct. 20, 1954]

CROSS REFERENCES: For the rules and regulations under the Securities Exchange Act of 1934, see part 240 of this chapter. For general requirements as to prospectuses, see §§ 230.400–230.434a.

§ 230.153a Definition of “preceded by a prospectus” as used in section 5(b)(2) of the Act, in relation to certain transactions requiring approval of security holders.

The term *preceded by a prospectus*, as used in section 5(b)(2) of the Act with respect to any requirement for the delivery of a prospectus to security holders of a corporation or other person, in connection with transactions of the character specified in paragraph (a) of § 230.145, shall mean the delivery of a prospectus:

(a) Prior to the vote of security holders on such transactions; or,

(b) With respect to actions taken by consent, prior to the earliest date on which the corporate action may be taken; to all security holders of record of such corporation or other person, entitled to vote on or consent to the proposed transaction, at their address of record on the transfer records of the corporation or other person.

[37 FR 23636, Nov. 7, 1972]

§ 230.153b Definition of “preceded by a prospectus”, as used in section 5(b)(2), in connection with certain transactions in standardized options.

The term *preceded by a prospectus*, as used in section 5(b)(2) of the Act with

respect to any requirement for the delivery of a prospectus relating to standardized options registered on Form S-20, shall mean the delivery, prior to any transactions, of copies of such prospectus to each options market upon which the options are traded, for the purpose of redelivery to options customers upon their request, *Provided* That:

(a) Such options market shall thereto have requested of the issuer, from time to time, such number of copies of such prospectus as may have appeared reasonably necessary to comply with the requests of options customers, and shall have delivered promptly from its supply on hand a copy to any options customer making a request thereof; and

(b) The issuer shall have furnished such options market with such reasonable number of copies of such prospectus as may have been requested by the options market for the purpose stated above.

(15 U.S.C. 77a *et seq.*)

[47 FR 41955, Sept. 23, 1982]

§ 230.154 Delivery of prospectuses to investors at the same address.

(a) *Delivery of a single prospectus.* If you must deliver a prospectus under the federal securities laws, for purposes of sections 5(b) and 2(a)(10) of the Act (15 U.S.C. 77e(b) and 77b(a)(10)) or § 240.15c2-8(b) of this chapter, you will be considered to have delivered a prospectus to investors who share an address if:

(1) You deliver a prospectus to the shared address;

(2) You address the prospectus to the investors as a group (for example, "ABC Fund [or Corporation] Shareholders," "Jane Doe and Household," "The Smith Family") or to each of the investors individually (for example, "John Doe and Richard Jones"); and

(3) The investors consent in writing to delivery of one prospectus.

(b) *Implied consent.* You do not need to obtain written consent from an investor under paragraph (a)(3) of this section if all of the following conditions are met:

(1) The investor has the same last name as the other investors, or you

reasonably believe that the investors are members of the same family;

(2) You have sent the investor a notice at least 60 days before you begin to rely on this section concerning delivery of prospectuses to that investor. The notice must be a separate written statement and:

(i) State that only one prospectus will be delivered to the shared address unless you receive contrary instructions;

(ii) Include a toll-free telephone number or be accompanied by a reply form that is pre-addressed with postage provided, that the investor can use to notify you that he or she wishes to receive a separate prospectus;

(iii) State the duration of the consent;

(iv) Explain how an investor can revoke consent;

(v) State that you will begin sending individual copies to an investor within 30 days after you receive revocation of the investor's consent; and

(vi) Contain the following prominent statement, or similar clear and understandable statement, in bold-face type: "Important Notice Regarding Delivery of Shareholder Documents." This statement also must appear on the envelope in which the notice is delivered. Alternatively, if the notice is delivered separately from other communications to investors, this statement may appear either on the notice or on the envelope in which the notice is delivered;

NOTE TO PARAGRAPH (B)(2): The notice should be written in plain English. See § 230.421(d)(2) of this chapter for a discussion of plain English principles.

(3) You have not received the reply form or other notification indicating that the investor wishes to continue to receive an individual copy of the prospectus, within 60 days after you sent the notice; and

(4) You deliver the prospectus to a post office box or to a residential street address. You can assume a street address is a residence unless you have information that indicates it is a business.

(c) *Revocation of consent.* If an investor, orally or in writing, revokes consent to delivery of one prospectus to a shared address (provided under paragraphs (a)(3) or (b) of this section), you