

§ 230.429

information is required to be delivered, upon written or oral request, a copy of the information that has been incorporated by reference pursuant to Item 3 of Form S-8 (not including exhibits to the information that is incorporated by reference unless such exhibits are specifically incorporated by reference into the information that the registration statement incorporates).

(4) Where interests in a plan are registered, the registrant shall deliver or cause to be delivered promptly, without charge, to each employee to whom information is required to be delivered, upon written or oral request, a copy of the then latest annual report of the plan filed pursuant to Section 15(d) of the Exchange Act, whether on Form 11-K (§249.311 of this chapter) or included as part of the registrant's annual report on Form 10-K and Form 10-KSB.

(5) The registrant shall deliver or cause to be delivered to all employees participating in a stock option plan or plan fund that invests in registrant securities (and other plan participants who request such information orally or in writing) who do not otherwise receive such material, copies of all reports, proxy statements and other communications distributed to its security holders generally, provided that such material is sent or delivered no later than the time it is sent to security holders.

(c) As used in this Rule, the term *employee benefit plan* is defined in Rule 405 of Regulation C (§230.405 of this chapter) and the term *employee* is defined in General Instruction A.1 of Form S-8.

[55 FR 23923, June 13, 1990, as amended at 57 FR 10614, Mar. 27, 1992]

§ 230.429 Prospectus relating to several registration statements.

(a) Where a registrant has filed two or more registration statements, it may file a single prospectus in the latest registration statement in order to satisfy the requirements of the Act and the rules and regulations thereunder for that offering and any other offering(s) registered on the earlier registration statement(s). The combined prospectus in the latest registration statement must include all of the information that currently would be required in a prospectus relating to all

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offering(s) that it covers. The combined prospectus may be filed as part of the initial filing of the latest registration statement, in a pre-effective amendment to it or in a post-effective amendment to it.

(b) Where a registrant relies on paragraph (a) of this section, the registration statement containing the combined prospectus shall act, upon effectiveness, as a post-effective amendment to any earlier registration statement whose prospectus has been combined in the latest registration statement. The registrant must identify any earlier registration statement to which the combined prospectus relates by setting forth the Commission file number at the bottom of the facing page of the latest registration statement.

[66 FR 8896, Feb. 5, 2001]

§ 230.430 Prospectus for use prior to effective date.

(a) A form of prospectus filed as a part of the registration statement shall be deemed to meet the requirements of section 10 of the Act for the purpose of section 5(b)(1) thereof prior to the effective date of the registration statement, provided such form of prospectus contains substantially the information required by the Act and the rules and regulations thereunder to be included in a prospectus meeting the requirements of section 10(a) of the Act for the securities being registered, or contains substantially that information except for the omission of information with respect to the offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices, or other matters dependent upon the offering price. Every such form of prospectus shall be deemed to have been filed as a part of the registration statement for the purpose of section 7 of the Act.

(b) A form of prospectus filed as part of a registration statement on Form N-1A (§239.15A and §274.11A of this chapter), Form N-2 (§239.14 and §274.11a-1 of this chapter), Form N-3 (§239.17a and §274.11b of this chapter), Form N-4 (§239.17b and §274.11c of this chapter), or Form N-6 (§239.17c and §274.11d of this chapter) shall be deemed to meet the requirements of Section 10 of the

Act (15 U.S.C. 77j) for the purpose of Section 5(b)(1) thereof (15 U.S.C. 77e(b)(1)) prior to the effective date of the registration statement, provided that:

(1) Such form of prospectus meets the requirements of paragraph (a) of this section; and

(2) Such registration statement contains a form of Statement of Additional Information that is made available to persons receiving such prospectus upon written or oral request, and without charge, unless the form of prospectus contains the information otherwise required to be disclosed in the form of Statement of Additional Information. Every such form of prospectus shall be deemed to have been filed as part of the registration statement for the purpose of section 7 of the Act.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 3(b), 12, 13, 14, 15(d), 23(a), 48 Stat. 882, 892, 894, 895, 901; secs. 203(a), 1, 3, 8, 49 Stat. 704, 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 4, 5, 6(d), 78 Stat. 569, 570-574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3, 4, 5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 89 Stat. 117, 118, 119; sec. 308(b), 90 Stat. 57; sec. 18, 89 Stat. 155; secs. 202, 203, 204, 91 Stat. 1494, 1498-1500; sec. 20(a), 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 38, 54 Stat. 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 79t(a), 77sss(a), 80a-37)

[47 FR 11440, Mar. 16, 1982, as amended at 57 FR 56834, Dec. 1, 1992; 67 FR 19868, Apr. 23, 2002]

§ 230.430A Prospectus in a registration statement at the time of effectiveness.

(a) The form of prospectus filed as part of a registration statement that is declared effective may omit information with respect to the public offering price, underwriting syndicate (including any material relationships between the registrant and underwriters not named therein), underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices and other items dependent upon the offering price, delivery dates, and terms of the securities dependent upon the offering date; and such form of prospectus need

not contain such information in order for the registration statement to meet the requirements of Section 7 of the Securities Act (15 U.S.C. 77g) for the purposes of Section 5 thereof (15 U.S.C. 77e), *Provided*, That:

(1) The securities to be registered are offered for cash;

(2) The registrant furnishes the undertakings required by Item 512(i) of Regulation S-K (§229.512(i) of this chapter); and

(3) The information omitted in reliance upon paragraph (a) from the form of prospectus filed as part of a registration statement that is declared effective is contained in a form of prospectus filed with the Commission pursuant to Rule 424(b) or Rule 497(h) under the Securities Act (§§ 230.424(b) or 230.497(h) of this chapter); except that if such form of prospectus is not so filed by the later of fifteen business days after the effective date of the registration statement or fifteen business days after the effectiveness of a post-effective amendment thereto that contains a form of prospectus, or transmitted by a means reasonably calculated to result in filing with the Commission by that date, the information omitted in reliance upon paragraph (a) must be contained in an effective post-effective amendment to the registration statement.

Instruction to Paragraph (a): A decrease in the volume of securities offered or change in the bona fide estimate of the maximum offering price range from that indicated in the form of prospectus filed as part of a registration statement that is declared effective may be disclosed in the form of prospectus filed with the Commission pursuant to §230.424(b) or §230.497(h) under the Securities Act so long as the decrease in the volume or change in the price range would not materially change the disclosure contained in the registration statement at effectiveness. Notwithstanding the foregoing, any increase or decrease in volume (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b)(1) (§230.424(b)(1)) or Rule 497(h) (§230.497(h)) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.