

**§ 230.135a**

**17 CFR Ch. II (4-1-10 Edition)**

constitute an offer of any securities for sale; and

(2) *Limited notice content.* The notice otherwise includes no more than the following information:

- (i) The name of the issuer;
- (ii) The title, amount and basic terms of the securities offered;
- (iii) The amount of the offering, if any, to be made by selling security holders;
- (iv) The anticipated timing of the offering;
- (v) A brief statement of the manner and the purpose of the offering, without naming the underwriters;
- (vi) Whether the issuer is directing its offering to only a particular class of purchasers;
- (vii) Any statements or legends required by the laws of any state or foreign country or administrative authority; and
- (viii) In the following offerings, the notice may contain additional information, as follows:

(A) *Rights offering.* In a rights offering to existing security holders:

- (1) The class of security holders eligible to subscribe;
- (2) The subscription ratio and expected subscription price;
- (3) The proposed record date;
- (4) The anticipated issuance date of the rights; and
- (5) The subscription period or expiration date of the rights offering.

(B) *Offering to employees.* In an offering to employees of the issuer or an affiliated company:

- (1) The name of the employer;
- (2) The class of employees being offered the securities;
- (3) The offering price; and
- (4) The duration of the offering period.

(C) *Exchange offer.* In an exchange offer:

- (1) The basic terms of the exchange offer;
- (2) The name of the subject company;
- (3) The subject class of securities sought in the exchange offer.

(D) *Rule 145(a) offering.* In a § 230.145(a) offering:

- (1) The name of the person whose assets are to be sold in exchange for the securities to be offered;

(2) The names of any other parties to the transaction;

(3) A brief description of the business of the parties to the transaction;

(4) The date, time and place of the meeting of security holders to vote on or consent to the transaction; and

(5) A brief description of the transaction and the basic terms of the transaction.

(b) *Corrections of misstatements about the offering.* A person that publishes a notice in reliance on this section may issue a notice that contains no more information than is necessary to correct inaccuracies published about the proposed offering.

NOTE TO § 230.135: Communications under this section relating to business combination transactions must be filed as required by § 230.425(b).

[64 FR 61449, Nov. 10, 1999]

**§ 230.135a Generic advertising.**

(a) For the purposes only of section 5 of the Act, a notice, circular, advertisement, letter, sign, or other communication, published or transmitted to any person which does not specifically refer by name to the securities of a particular investment company, to the investment company itself, or to any other securities not exempt under section 3(a) of the Act, will not be deemed to offer any security for sale, provided:

(1) Such communication is limited to any one or more of the following:

(i) Explanatory information relating to securities of investment companies generally or to the nature of investment companies, or to services offered in connection with the ownership of such securities,

(ii) The mention or explanation of investment companies of different generic types or having various investment objectives, such as *balanced funds, growth funds, income funds, leveraged funds, specialty funds, variable annuities, bond funds, and no-load funds,*

(iii) Offers, descriptions, and explanation of various products and services not constituting a security subject to registration under the Act: *Provided,* That such offers, descriptions, and explanations do not relate directly to the desirability of owning or purchasing a security issued by a registered investment company,

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(iv) Invitation to inquire for further information, and

(2) Such communication contains the name and address of a registered broker or dealer or other person sponsoring the communication.

(b) If such communication contains a solicitation of inquiries and prospectuses for investment company securities are to be sent or delivered in response to such inquiries, the number of such investment companies and, if applicable, the fact that the sponsor of the communication is the principal underwriter or investment adviser in respect to such investment companies shall be stated.

(c) With respect to any communication describing any type of security, service, or product, the broker, dealer, or other person sponsoring such communication must offer for sale a security, service, or product of the type described in such communication.

[37 FR 10073, May 19, 1972, as amended at 37 FR 10931, June 1, 1972]

### **§ 230.135b Materials not deemed an offer to sell or offer to buy nor a prospectus.**

Materials meeting the requirements of § 240.9b-1 of this chapter shall not be deemed an offer to sell or offer to buy a security for purposes solely of Section 5 (15 U.S.C. 77e) of the Act, nor shall such materials be deemed a prospectus for purposes of Sections 2(a)(10) and 12(a)(2) (15 U.S.C. 77b(a)(10) and 77(a)(2)) of the Act, even if such materials are referred to in, deemed to be incorporated by reference into, or otherwise in any manner deemed to be a part of a Form S-20 prospectus.

[67 FR 228, Jan. 2, 2002]

### **§ 230.135c Notice of certain proposed unregistered offerings.**

(a) For the purposes only of section 5 of the Act, a notice given by an issuer required to file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 or a foreign issuer that is exempt from registration under the Securities Exchange Act of 1934 pursuant to § 240.12g3-2(b) of this chapter that it proposes to make, is making or has made an offering of securities not registered or required to be registered under the Act shall not be

deemed to offer any securities for sale if:

(1) Such notice is not used for the purpose of conditioning the market in the United States for any of the securities offered;

(2) Such notice states that the securities offered will not be or have not been registered under the Act and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements; and

(3) Such notice contains no more than the following additional information:

(i) The name of the issuer;

(ii) The title, amount and basic terms of the securities offered, the amount of the offering, if any, made by selling security holders, the time of the offering and a brief statement of the manner and purpose of the offering without naming the underwriters;

(iii) In the case of a rights offering to security holders of the issuer, the class of securities the holders of which will be or were entitled to subscribe to the securities offered, the subscription ratio, the record date, the date upon which the rights are proposed to be or were issued, the term or expiration date of the rights and the subscription price, or any of the foregoing;

(iv) In the case of an offering of securities in exchange for other securities of the issuer or of another issuer, the name of the issuer and the title of the securities to be surrendered in exchange for the securities offered, the basis upon which the exchange may be made, or any of the foregoing;

(v) In the case of an offering to employees of the issuer or to employees of any affiliate of the issuer, the name of the employer and class or classes of employees to whom the securities are offered, the offering price or basis of the offering and the period during which the offering is to be or was made or any of the foregoing; and

(vi) Any statement or legend required by State or foreign law or administrative authority.

(b) Any notice contemplated by this section may take the form of a news