§ 230.135d

Release or a written communication directed to security holders or employees, as the case may be, or other published statements.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, in the case of a rights offering of a security listed or subject to unlisted trading privileges on a national securities exchange or quoted on the NASDAQ inter-dealer quotation system information with respect to the interest rate, conversion ratio and subscription price may be disseminated through the facilities of the exchange, the consolidated transaction reporting system, the NASDAQ system or the Dow Jones broad tape, provided such information is already disclosed in a Form 8-K (§ 249.308 of this chapter) furnished to the Commission or, in the case of an issuer relying on § 240.12g3–2(b) of this chapter, shall furnish such notice to the Commission in accordance with the provisions of that exemptive Section.

(d) The issuer shall file any notice contemplated by this section with the Commission under cover of Form 8-K (§ 249.306 of this chapter) or furnish such notice under Form 6-K (§ 249.308 of this chapter), as applicable, and, if relying on § 240.12g3–2(b) of this chapter, shall furnish such notice to the Commission in accordance with the provisions of that exemptive Section.

[59 FR 21649, Apr. 26, 1994]

§ 230.135d [Reserved]

§ 230.135e Offshore press conferences, meetings with issuer representatives conducted offshore, and press-related materials released offshore.

(a) For the purposes only of Section 5 of the Act (15 U.S.C. 77e), an issuer that is a foreign private issuer (as defined in § 230.405) or a foreign government issuer, a selling security holder of the securities of such issuers, or their representatives will not be deemed to offer any security for sale by virtue of providing any journalist with access to its press conferences held outside of the United States, to meetings with issuer or selling security holder representatives conducted outside of the United States, or to written press-related materials released outside of the United States, at or in which a present or proposed offering of securities is discussed, if:

(1) The present or proposed offering is not being, or to be, conducted solely in the United States;

NOTE TO PARAGRAPH (a)(1): An offering will be considered not to be made solely in the United States under this paragraph (a)(1) only if there is an intent to make a bona fide offering offshore.

(2) Access is provided to both U.S. and foreign journalists; and

(3) Any written press-related materials pertaining to transactions in which any of the securities will be or are being offered in the United States satisfy the requirements of paragraph (b) of this section.

(b) Any written press-related materials specified in paragraph (a)(3) of this section must:

(1) State that the written press-related materials are not an offer of securities for sale in the United States, that securities may not be offered or sold in the United States absent registration or an exemption from registration, that any public offering of securities to be made in the United States will be made by means of a prospectus that may be obtained from the issuer or the selling security holder and that will contain detailed information about the company and management, as well as financial statements;

(2) If the issuer or selling security holder intends to register any part of the present or proposed offering in the United States, include a statement regarding this intention; and

(3) Not include any purchase order, or coupon that could be returned indicating interest in the offering, as part of, or attached to, the written press-related materials.

(c) For the purposes of this section, United States means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.


§ 230.136 Definition of certain terms in relation to assessable stock.

(a) An offer, offer to sell, or offer for sale of securities shall be deemed to be made to the holders of assessable stock
§ 230.137 Publications or distributions of research reports by brokers or dealers that are not participating in an issuer’s registered distribution of securities.

Under the following conditions, the terms “offers,” “participates,” or “participation” in section 2(a)(11) of the Act shall not be deemed to apply to the publication or distribution of research reports with respect to the securities of an issuer which is the subject of an offering pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective:

(a) The broker or dealer (and any affiliate) that has distributed the report and, if different, the person (and any affiliate) that has published the report have not participated, are not participating, and do not propose to participate in the distribution of the securities that are or will be the subject of the registered offering.

(b) In connection with the publication or distribution of the research report, the broker or dealer (and any affiliate) that has distributed the report and, if different, the person (and any affiliate) that has published the report are not receiving and have not received consideration directly or indirectly from, and are not acting under any direct or indirect arrangement or understanding with:

(1) The issuer of the securities;
(2) A selling security holder;
(3) Any participant in the distribution of the securities that are or will be the subject of the registration statement; or
(4) Any other person interested in the securities that are or will be the subject of the registration statement.

Instruction to § 230.137(b). This paragraph (b) does not preclude payment of:

1. The regular price being paid by the broker or dealer for independent research, so long as the conditions of this paragraph (b) are satisfied; or
2. The regular subscription or purchase price for the research report.

(c) The broker or dealer publishes or distributes the research report in the regular course of its business.

(d) The issuer is not and during the past three years neither the issuer nor any of its predecessors was:

1. A blank check company as defined in Rule 419(a)(2) (§ 230.419(a)(2));
2. A shell company, other than a business combination related shell company, each as defined in Rule 405 (§ 230.405); or
3. An issuer for an offering of penny stock as defined in Rule 3a51–1 of the Securities Exchange Act of 1934 (§ 240.3a51–1 of this chapter).

(e) Definition of research report. For purposes of this section, research report means a written communication, as defined in Rule 405, that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision.

[70 FR 44802, Aug. 3, 2005]