

(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 must begin sending individual copies to that investor within 30 days after you receive the revocation. If the individual’s consent concerns delivery of the prospectus of a registered open-end management investment company, at least once a year you must explain to investors who have consented how they can revoke their consent. The explanation must be reasonably designed to reach these investors.

(d) *Definition of address.* For purposes of this section, *address* means a street address, a post office box number, an electronic mail address, a facsimile telephone number, or other similar destination to which paper or electronic documents are delivered, unless otherwise provided in this section. If you have reason to believe that an address is the street address of a multi-unit building, the address must include the unit number.

[64 FR 62545, Nov. 16, 1999, as amended at 65 FR 65749, Nov. 2, 2000]

#### § 230.155 Integration of abandoned offerings.

PRELIMINARY NOTE: Compliance with paragraph (b) or (c) of this section provides a non-exclusive safe harbor from integration of private and registered offerings. Because of the objectives of Rule 155 and the policies underlying the Act, Rule 155 is not available to any issuer for any transaction or series of transactions that, although in technical compliance with the rule, is part of a plan or scheme to evade the registration requirements of the Act.

(a) *Definition of terms.* For the purposes of this section only, a *private offering* means an unregistered offering of

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securities that is exempt from registration under Section 4(2) or 4(6) of the Act (15 U.S.C. 77d(2) and 77d(6)) or Rule 506 of Regulation D (§ 230.506).

(b) *Abandoned private offering followed by a registered offering.* A private offering of securities will not be considered part of an offering for which the issuer later files a registration statement if:

(1) No securities were sold in the private offering;

(2) The issuer and any person(s) acting on its behalf terminate all offering activity in the private offering before the issuer files the registration statement;

(3) The Section 10(a) final prospectus and any Section 10 preliminary prospectus used in the registered offering disclose information about the abandoned private offering, including:

(i) The size and nature of the private offering;

(ii) The date on which the issuer abandoned the private offering;

(iii) That any offers to buy or indications of interest given in the private offering were rejected or otherwise not accepted; and

(iv) That the prospectus delivered in the registered offering supersedes any offering materials used in the private offering; and

(4) The issuer does not file the registration statement until at least 30 calendar days after termination of all offering activity in the private offering, unless the issuer and any person acting on its behalf offered securities in the private offering only to persons who were (or who the issuer reasonably believes were):

(i) Accredited investors (as that term is defined in § 230.501(a)); or

(ii) Persons who satisfy the knowledge and experience standard of § 230.506(b)(2)(ii).

(c) *Abandoned registered offering followed by a private offering.* An offering for which the issuer filed a registration statement will not be considered part of a later commenced private offering if:

(1) No securities were sold in the registered offering;

(2) The issuer withdraws the registration statement under § 230.477;

(3) Neither the issuer nor any person acting on the issuer's behalf com-

mences the private offering earlier than 30 calendar days after the effective date of withdrawal of the registration statement under § 230.477;

(4) The issuer notifies each offeree in the private offering that:

(i) The offering is not registered under the Act;

(ii) The securities will be “restricted securities” (as that term is defined in § 230.144(a)(3)) and may not be resold unless they are registered under the Act or an exemption from registration is available;

(iii) Purchasers in the private offering do not have the protection of Section 11 of the Act (15 U.S.C. 77k); and

(iv) A registration statement for the abandoned offering was filed and withdrawn, specifying the effective date of the withdrawal; and

(5) Any disclosure document used in the private offering discloses any changes in the issuer's business or financial condition that occurred after the issuer filed the registration statement that are material to the investment decision in the private offering.

[66 FR 8896, Feb. 5, 2001]

**§ 230.156 Investment company sales literature.**

(a) Under the federal securities laws, including section 17(a) of the Securities Act of 1933 (15 U.S.C. 77q(a)) and section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) and Rule 10b-5 thereunder (17 CFR part 240), it is unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, to use sales literature which is materially misleading in connection with the offer or sale of securities issued by an investment company. Under these provisions, sales literature is materially misleading if it: (1) Contains an untrue statement of a material fact or (2) omits to state a material fact necessary in order to make a statement made, in the light of the circumstances of its use, not misleading.

(b) Whether or not a particular description, representation, illustration, or other statement involving a material fact is misleading depends on evaluation of the context in which it is made. In considering whether a particular statement involving a material