

Securities and Exchange Commission

§ 230.171

or dealer, authorizes or approves such release or dissemination before it is made.

(c) *Exclusions.* A communication containing information about the registered offering or released or disseminated as part of the offering activities in the registered offering is excluded from the exemption of this section.

(d) *Conditions to exemption.* The following conditions must be satisfied:

(1) The issuer has previously released or disseminated information of the type described in this section in the ordinary course of its business;

(2) The timing, manner, and form in which the information is released or disseminated is consistent in material respects with similar past releases or disseminations;

(3) The information is released or disseminated for intended use by persons, such as customers and suppliers, other than in their capacities as investors or potential investors in the issuer's securities, by the issuer's employees or agents who historically have provided such information; and

(4) The issuer is not an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48)).

[70 FR 44808, Aug. 3, 2005]

§ 230.170 Prohibition of use of certain financial statements.

Financial statements which purport to give effect to the receipt and application of any part of the proceeds from the sale of securities for cash shall not be used unless such securities are to be offered through underwriters and the underwriting arrangements are such that the underwriters are or will be committed to take and pay for all of the securities, if any are taken, prior to or within a reasonable time after the commencement of the public offering, or if the securities are not so taken to refund to all subscribers the full amount of all subscription payments made for the securities. The caption of any such financial statement shall clearly set forth the assumptions upon which such statement is based. The caption shall be in type at least as

large as that used generally in the body of the statement.

[21 FR 7566, Oct. 3, 1956]

§ 230.171 Disclosure detrimental to the national defense or foreign policy.

(a) Any requirement to the contrary notwithstanding, no registration statement, prospectus, or other document filed with the Commission or used in connection with the offering or sale of any securities shall contain any document or information which, pursuant to Executive order, has been classified by an appropriate department or agency of the United States for protection in the interests of national defense or foreign policy.

(b) Where a document or information is omitted pursuant to paragraph (a) of this section, there shall be filed, in lieu of such document or information, a statement from an appropriate department or agency of the United States to the effect that such document or information has been classified or that the status thereof is awaiting determination. Where a document is omitted pursuant to paragraph (a) of this section, but information relating to the subject matter of such document is nevertheless included in material filed with the Commission pursuant to a determination of an appropriate department or agency of the United States that disclosure of such information would not be contrary to the interests of national defense or foreign policy, a statement from such department or agency to that effect shall be submitted for the information of the Commission. A registrant may rely upon any such statement in filing or omitting any document or information to which the statement relates.

(c) The Commission may protect any information in its possession which may require classification in the interests of national defense or foreign policy pending determination by an appropriate department or agency as to whether such information should be classified.

(d) It shall be the duty of the registrant to submit the documents or information referred to in paragraph (a) of this section to the appropriate department or agency of the United States prior to filing them with the