§ 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 fact is or might be misleading, weight should be given to all pertinent factors, including, but not limited to, those listed below.

17 CFR Ch. II (4–1–11 Edition)
§ 230.158 Definitions of certain terms in the last paragraph of section 11(a).

(a) An “earning statement” made generally available to securityholders of the registrant pursuant to the last paragraph of section 11(a) of the Act shall be sufficient for the purposes of such paragraph if:

(1) There is included the information required for statements of income contained either:

(i) In Item 8 of Form 10-K (§239.310 of this chapter), part I, Item 1 of Form 10-Q (§240.308a of this chapter), or Rule 14a-3(b) (§240.14a-3(b) of this chapter) under the Securities Exchange Act of 1934;

(ii) In Item 17 of Form 20-F (§249.220f of this chapter), if appropriate; or

(iii) In Form 40-F (§249.240f of this chapter); and

(2) The information specified in the last paragraph of section 11(a) is contained in one report or any combination of reports either:

(i) On Form 10-K, Form 10-Q, Form 8-K (§249.308 of this chapter), or in the annual report to security holders pursuant to Rule 14a-3 under the Securities Exchange Act of 1934 (§240.14a-3 of this chapter); or

(ii) On Form 20-F, Form 40-F or Form 6-K (§249.306 of this chapter).

A subsidiary issuing debt securities guaranteed by its parent will be deemed to have met the requirements of this paragraph if the parent’s income statements satisfy the criteria of this paragraph and information respecting the subsidiary is included to the same extent as was presented in the registration statement. An “earning statement” not meeting the requirements of this paragraph may otherwise be sufficient for purposes of the last paragraph of section 11(a).

(b) For purposes of the last paragraph of section 11(a) only, the “earning statement” contemplated by paragraph (a) of this section shall be deemed to be “made generally available to its security holders” if the registrant:

(1) Is required to file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 and

(2) Has filed its report or reports on Form 10-K and Form 10-KSB, Form 10-Q and Form 10-QSB, Form 8-K, Form