

value as determined by an accepted standard.

(ii) No adjustment to the aggregate offering price in this section shall be made for other offerings made in reliance upon other rules or regulations adopted pursuant to section 3(b) of the Act. The aggregate offering price under other rules and regulations adopted pursuant to section 3(b) shall not be reduced by offerings made under this § 230.701.

(iii) The number of shares permitted to be offered and sold under § 230.701(b)(5)(ii) shall not be reduced by the number of shares offered or sold in reliance upon other rules or regulations adopted pursuant to section 3(b) of the Act, or vice versa.

(5) The amount of securities offered and sold in reliance on § 230.701 shall not exceed the greater of \$500,000 or the amount determined by (b)(5)(i) or (ii) of this section; provided, however, that the aggregate offering price of securities of the issuer subject to outstanding offers made in reliance on § 230.701 plus securities of the issuer sold in the preceding 12 months in reliance on § 230.701 shall in no event exceed \$5,000,000.

(i) The aggregate offering price of securities of the issuer subject to outstanding offers in reliance on § 230.701 plus securities of the issuer sold in the preceding 12 months in reliance on § 230.701 shall not exceed 15% of the total assets of the issuer, measured at the end of its last fiscal year; or

(ii) The number of securities of the issuer subject to outstanding offers in reliance on § 230.701 plus securities of the issuer sold in the preceding 12 months in reliance on § 230.701 shall not exceed 15% of the outstanding securities of that class. The outstanding securities of a class shall include securities of that class issuable pursuant to the exercise of outstanding options, warrants, rights or conversion of convertible securities, unless such options, warrants, rights or convertible securities were issued under § 230.701. If the securities offered or sold under § 230.701 are convertible securities, the number of securities subject to outstanding offers and sold under this subsection shall be deemed to be the shares of the

securities into which such securities may be converted.

(6) Offers and sales exempt pursuant to this § 230.701 are deemed to be a part of a single, discrete offering and are not subject to integration with any other offering or sale whether registered under the Act or otherwise exempt from the registration requirements of the Act.

(c) *Resale limitations.* (1) Securities issued pursuant to this § 230.701 are deemed to be *restricted securities* as defined in § 230.144.

(2) Resales of such securities must be in compliance with the registration requirements of the Act or an exemption therefrom.

(3) Ninety days after the issuer becomes subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, securities issued in a § 230.701 transaction may be resold by persons other than affiliates in reliance on § 230.144 without compliance with paragraphs (c), (d), (e) and (h) thereof, and by affiliates without compliance with paragraph (d) thereof.

[53 FR 12921, Apr. 20, 1988]

§§ 230.702(T)–230.703(T) [Reserved]

REGULATION S—RULES GOVERNING OFFERS AND SALES MADE OUTSIDE THE UNITED STATES WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933

SOURCE: Sections 230.901 to 230.904 appear at 55 FR 18322, May 2, 1990, unless otherwise noted.

PRELIMINARY NOTES

1. The following rules relate solely to the application of Section 5 of the Securities Act of 1933 (the *Act*) [15 U.S.C. 77e] and not to antifraud or other provisions of the federal securities laws.

2. In view of the objective of these rules and the policies underlying the Act, Regulation S is not available with respect to any transaction or series of transactions that, although in technical compliance with these rules, is part of a plan or scheme to evade the registration provisions of the Act. In such cases, registration under the Act is required.

3. Nothing in these rules obviates the need for any issuer or any other person to comply with the securities registration or broker-

dealer registration requirements of the Securities Exchange Act (the *Exchange Act*), whenever such requirements are applicable.

4. Nothing in these rules obviates the need to comply with any applicable state law relating to the offer and sale of securities.

5. Attempted compliance with any rule in Regulation S does not act as an exclusive election; a person making an offer or sale of securities may also claim the availability of any applicable exemption from the registration requirements of the Act.

6. Regulation S is available only for offers and sales of securities outside the United States. Securities acquired overseas, whether or not pursuant to Regulation S, may be resold in the United States only if they are registered under the Act or an exemption from registration is available.

7. Nothing in these rules precludes access by journalists for publications with a general circulation in the United States to offshore press conferences, press releases and meetings with company press spokespersons in which an offshore offering or tender offer is discussed, provided that the information is made available to the foreign and United States press generally and is not intended to induce purchases of securities by persons in the United States or tenders of securities by United States holders in the case of exchange offers.

8. The provisions of this Regulation S shall not apply to offers and sales of securities issued by open-end investment companies or unit investment trusts registered or required to be registered or closed-end investment companies required to be registered, but not registered, under the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq.*] (the *1940 Act*).

§ 230.901 General statement.

For the purposes only of section 5 of the Act (15 U.S.C. § 77e), the terms *offer*, *offer to sell*, *sell*, *sale*, and *offer to buy* shall be deemed to include offers and sales that occur within the United States and shall be deemed not to include offers and sales that occur outside the United States.

§ 230.902 Definitions.

As used in Regulation S, the following terms shall have the meanings indicated.

(a) *Designated Offshore Securities Market*. *Designated offshore securities market* means:

(1) The Eurobond market, as regulated by the Association of International Bond Dealers; the Amsterdam Stock Exchange; the Australian Stock Exchange Limited; the Bourse de

Bruxelles; the Frankfurt Stock Exchange; The Stock Exchange of Hong Kong Limited; The International Stock Exchange of the United Kingdom and the Republic of Ireland, Ltd.; the Johannesburg Stock Exchange; the Bourse de Luxembourg; the Borsa Valori di Milan; the Montreal Stock Exchange; the Bourse de Paris; the Stockholm Stock Exchange; the Tokyo Stock Exchange; the Toronto Stock Exchange; the Vancouver Stock Exchange; and the Zurich Stock Exchange; the Helsinki Stock Exchange; the Alberta Stock Exchange; the Oslo Stock Exchange; the Mexico Stock Exchange; the Istanbul Stock Exchange; and the Irish Stock Exchange;

(2) Any foreign securities exchange or non-exchange market designated by the Commission. Attributes to be considered in determining whether to designate such a foreign securities market, among others, include:

- (i) Organization under foreign law;
- (ii) Association with a generally recognized community of brokers, dealers, banks, or other professional intermediaries with an established operating history;
- (iii) Oversight by a governmental or self-regulatory body;
- (iv) Oversight standards set by an existing body of law;
- (v) Reporting of securities transactions on a regular basis to a governmental or self-regulatory body;
- (vi) A system for exchange of price quotations through common communications media; and
- (vii) An organized clearance and settlement system.

(b) *Directed Selling Efforts*. (1) *Directed selling efforts* means any activity undertaken for the purpose of, or that could reasonably be expected to have the effect of, conditioning the market in the United States for any of the securities being offered in reliance on this Regulation S. Such activity includes placement of an advertisement in a publication with a general circulation in the United States that refers to the offering of securities being made in reliance upon this Regulation S.

(2) Notwithstanding paragraph (b)(1) of this section, placement of an advertisement required to be published under United States or foreign law, or