Securities and Exchange Commission

contains substantially the following statement:

No offer to buy the securities can be accepted and no part of the purchase price can be received until the registration statement has become effective, and any such offer may be withdrawn or revoked, without obligation or commitment of any kind, at any time prior to notice of its acceptance given after the effective date.

Provided, that such statement need not be included in such a communication to a dealer.

(e) A section 10 prospectus included in any communication pursuant to this section shall remain a prospectus for all purposes under the Act.

(f) The provision in paragraphs (c)(2) and (d) of this section that a prospectus that meets the requirements of section 10 of the Act precede or accompany a communication will be satisfied if such communication is an electronic communication containing an active hyperlink to such prospectus.

(g) This section does not apply to a communication relating to 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)).

§ 230.135 Notice of proposed registered offerings.

(a) When notice is not an offer. For purposes of section 5 of the Act (15 U.S.C. 77e) only, an issuer or a selling security holder (and any person acting on behalf of either of them) that publishes through any medium a notice of a proposed offering to be registered under the Act will not be deemed to offer its securities for sale through that notice if:

(1) Legend. The notice includes a statement to the effect that it does not
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Constitute an offer of any securities for sale; and

(2) Limited notice content. The notice otherwise includes no more than the following information:

(i) The name of the issuer;
(ii) The title, amount and basic terms of the securities offered;
(iii) The amount of the offering, if any, to be made by selling security holders;
(iv) The anticipated timing of the offering;
(v) A brief statement of the manner and the purpose of the offering, without naming the underwriters;
(vi) Whether the issuer is directing its offering to only a particular class of purchasers;
(vii) Any statements or legends required by the laws of any state or foreign country or administrative authority; and
(viii) In the following offerings, the notice may contain additional information, as follows:
(A) Rights offering. In a rights offering to existing security holders:
(1) The class of security holders eligible to subscribe;
(2) The subscription ratio and expected subscription price;
(3) The proposed record date;
(4) The anticipated issuance date of the rights; and
(5) The subscription period or expiration date of the rights offering.
(B) Offering to employees. In an offering to employees of the issuer or an affiliated company:
(1) The name of the employer;
(2) The class of employees being offered the securities;
(3) The offering price; and
(4) The duration of the offering period.
(C) Exchange offer. In an exchange offer:
(1) The basic terms of the exchange offer;
(2) The name of the subject company;
(3) The subject class of securities sought in the exchange offer.
(D) Rule 145(a) offering. In an § 230.145(a) offering:
(1) The name of the person whose assets are to be sold in exchange for the securities to be offered;
(2) The names of any other parties to the transaction;
(3) A brief description of the business of the parties to the transaction;
(4) The date, time and place of the meeting of security holders to vote on or consent to the transaction; and
(5) A brief description of the transaction and the basic terms of the transaction.

(b) Corrections of misstatements about the offering. A person that publishes a notice in reliance on this section may issue a notice that contains no more information than is necessary to correct inaccuracies published about the proposed offering.

Note to § 230.135: Communications under this section relating to business combination transactions must be filed as required by § 230.425(b).

[64 FR 61449, Nov. 10, 1999]