

(b) *Determination of amounts payable and guaranteed.* In making the determination under paragraph (a)(2) of this section:

(1) Amounts payable by the issuer under the contract and amounts guaranteed under the contract shall be determined by taking into account all charges under the contract, including, without limitation, charges that are imposed at the time that payments are made by the issuer; and

(2) A determination by the issuer at or prior to issuance of the contract shall be conclusive, provided that:

(i) Both the methodology and the economic, actuarial, and other assumptions used in the determination are reasonable;

(ii) The computations made by the issuer in support of the determination are materially accurate; and

(iii) The determination is made not more than six months prior to the date on which the form of contract is first offered.

(c) *Separate accounts.* This section does not apply to any contract whose value varies according to the investment experience of a separate account.

[74 FR 3175, Jan. 16, 2009]

EFFECTIVE DATE NOTE: At 74 FR 3175, Jan. 16, 2009, § 230.151A was added, effective Jan. 12, 2011.

**§ 230.152 Definition of “transactions by an issuer not involving any public offering” in section 4(2), for certain transactions.**

The phrase *transactions by an issuer not involving any public offering* in section 4(2) (48 Stat. 77, sec. 203(a), 48 Stat. 906; 15 U.S.C. 77d) shall be deemed to apply to transactions not involving any public offering at the time of said transactions although subsequently thereto the issuer decides to make a public offering and/or files a registration statement.

[2 FR 1076, May 26, 1937, as amended at 30 FR 2022, Feb. 13, 1965]

CROSS REFERENCE: For regulations relating to registration statement, see §§ 230.400-230.494.

**§ 230.152a Offer or sale of certain fractional interests.**

Any offer or sale of a security, evidenced by a scrip certificate, order

form or similar document which represents a fractional interest in a share of stock or similar security shall be deemed a transaction by a person other than an issuer, underwriter or dealer, within the meaning of section 4(1) of the act, if the fractional interest (a) resulted from a stock dividend, stock split, reverse stock split, conversion, merger or similar transaction, and (b) is offered or sold pursuant to arrangements for the purchase and sale of fractional interests among the person entitled to such fractional interests for the purpose of combining such interests into whole shares, and for the sale of such number of whole shares as may be necessary to compensate security holders for any remaining fractional interests not so combined, notwithstanding that the issuer or an affiliate of the issuer may act on behalf of or as agent for the security holders in effecting such transactions.

(Sec. 4, 48 Stat. 77; 15 U.S.C. 77d)

[30 FR 2657, Mar. 2, 1965]

**§ 230.153 Definition of “preceded by a prospectus” as used in section 5(b)(2) of the Act, in relation to certain transactions.**

(a) *Definition of preceded by a prospectus.* The term preceded by a prospectus as used in section 5(b)(2) of the Act, regarding any requirement of a broker or dealer to deliver a prospectus to a broker or dealer as a result of a transaction effected between such parties on or through a national securities exchange or facility thereof, trading facility of a national securities association, or an alternative trading system, shall mean the satisfaction of the conditions in paragraph (b) of this section.

(b) *Conditions.* Any requirement of a broker or dealer to deliver a prospectus for transactions covered by paragraph (a) of this section will be satisfied if:

(1) Securities of the same class as the securities that are the subject of the transaction are trading on that national securities exchange or facility thereof, trading facility of a national securities association, or alternative trading system;

(2) The registration statement relating to the offering is effective and is