§ 230.172 Delivery of prospectuses.

(a) Sending confirmations and notices of allocations. After the effective date of a registration statement, the following are exempt from the provisions of section 5(b)(1) of the Act if the conditions set forth in paragraph (c) of this section are satisfied:

(1) Written confirmations of sales of securities in an offering pursuant to a registration statement that contain information limited to that called for in Rule 10b–10 under the Securities Exchange Act of 1934 (§240.10b–10 of this chapter) and other information customarily included in written confirmations of sales of securities, which may include notices provided pursuant to Rule 173 (§230.173); and

(2) Notices of allocation of securities sold or to be sold in an offering pursuant to a registration statement that may include information identifying the securities (including the CUSIP number) and otherwise may include only information regarding pricing, allocation and settlement, and information incidental thereto.

(b) Transfer of the security. Any obligation under section 5(b)(2) of the Act to have a prospectus that satisfies the requirements of section 10(a) of the Act precede or accompany the carrying or delivery of a security in a registered offering is satisfied if the conditions in paragraph (c) of this section are met.

(c) Conditions. (1) The registration statement relating to the offering is effective and is not the subject of any pending proceeding or examination under section 8(d) or 8(e) of the Act;

(2) Neither the issuer, nor an underwriter or participating dealer is the subject of a pending proceeding under section 8A of the Act in connection with the offering; and

(3) The issuer has filed with the Commission a prospectus with respect to the offering that satisfies the requirements of section 10(a) of the Act or the issuer will make a good faith and reasonable effort to file such a prospectus within the time required under Rule 424 (§230.424) and, in the event that the issuer fails to file timely such a prospectus, the issuer files the prospectus as soon as practicable thereafter.

(4) The condition in paragraph (c)(3) of this section shall not apply to transactions by dealers requiring delivery of a final prospectus pursuant to section 4(3) of the Act.

(d) Exclusions. This section shall not apply to any:

(1) Offering of any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.);

(2) Offering of any 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));

(3) A business combination transaction as defined in Rule 165(f)(1) (§230.165(f)(1)); or

(4) Offering registered on Form S–8 (§239.16b of this chapter).

[70 FR 44808, Aug. 3, 2005]

§ 230.173 Notice of registration.

(a) In a transaction that represents a sale by the issuer or an underwriter, or a sale where there is not an exclusion or exemption from the requirement to deliver a final prospectus meeting the requirements of section 10(a) of the Act pursuant to section 4(3) of the Act or Rule 174 (§230.174), each underwriter or dealer selling in such transaction shall provide to each purchaser from it, not later than two business days following the completion of such sale, a copy of the final prospectus or, in lieu of such prospectus, a notice to the effect that the sale was made pursuant to a registration statement or in a transaction in which a final prospectus would have been required to have been delivered in the absence of Rule 172 (§230.172).

(b) If the sale was by the issuer and was not effected by or through an underwriter or dealer, the responsibility to send a prospectus, or in lieu of such prospectus, such notice as set forth in paragraph (a) of this section, shall be the issuer’s.