

§ 230.150

necessary to effect an equitable adjustment, in respect of dividends or interest paid or payable on the securities involved in the exchange, as between such security holder and other security holders of the same class accepting the offer of exchange.

[2 FR 1382, July 7, 1937]

§ 230.150 Definition of “commission or other remuneration” in section 3(a)(9), for certain transactions.

The term *commission or other remuneration* in section 3(a)(9) of the Act shall not include payments made by the issuer, directly or indirectly, to its security holders in connection with an exchange of securities for outstanding securities, when such payments are part of the terms of the offer of exchange.

[2 FR 1076, May 26, 1937]

§ 230.151 Safe harbor definition of certain “annuity contracts or optional annuity contracts” within the meaning of section 3(a)(8).

(a) Any annuity contract or optional annuity contract (a *contract*) shall be deemed to be within the provisions of section 3(a)(8) of the Securities Act of 1933 (15 U.S.C. 77c(a)(8)), *Provided*, That

(1) The annuity or optional annuity contract is issued by a corporation (the *insurer*) subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State or Territory of the United States or the District of Columbia;

(2) The insurer assumes the investment risk under the contract as prescribed in paragraph (b) of this section; and

(3) The contract is not marketed primarily as an investment.

(b) The insurer shall be deemed to assume the investment risk under the contract if:

(1) The value of the contract does not vary according to the investment experience of a separate account;

(2) The insurer for the life of the contract

(i) Guarantees the principal amount of purchase payments and interest credited thereto, less any deduction (without regard to its timing) for sales,

17 CFR Ch. II (4–1–11 Edition)

administrative or other expenses or charges; and

(ii) Credits a specified rate of interest (as defined in paragraph (c) of this section to net purchase payments and interest credited thereto; and

(3) The insurer guarantees that the rate of any interest to be credited in excess of that described in paragraph (b)(2)(ii) of this section will not be modified more frequently than once per year.

(c) The term *specified rate of interest*, as used in paragraph (b)(2)(ii) of this section, means a rate of interest under the contract that is at least equal to the minimum rate required to be credited by the relevant nonforfeiture law in the jurisdiction in which the contract is issued. If that jurisdiction does not have any applicable nonforfeiture law at the time the contract is issued (or if the minimum rate applicable to an existing contract is no longer mandated in that jurisdiction), the specified rate under the contract must at least be equal to the minimum rate then required for individual annuity contracts by the NAIC Standard Nonforfeiture Law.

[51 FR 20262, June 4, 1986]

§ 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

Securities and Exchange Commission

§ 230.153a

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 not the subject of any pending proceeding or examination under section 8(d) or 8(e) of the Act;

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

(4) The issuer has filed or will file with the Commission a prospectus that satisfies the requirements of section 10(a) of the Act.

(c) *Definitions.* (1) The term *national securities exchange*, as used in this section, shall mean a securities exchange registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).

(2) The term *trading facility*, as used in this section, shall mean a trading facility sponsored and governed by the rules of a registered securities association or a national securities exchange.

(3) The term *alternative trading system*, as used in this section, shall mean an alternative trading system as defined in Rule 300(a) of Regulation ATS under the Securities Exchange Act of 1934 (§242.300(a) of this chapter) registered with the Commission pursuant to Rule 301 of Regulation ATS under the Securities Exchange Act of 1934 (§242.301(a) of this chapter).

[70 FR 44804, Aug. 3, 2005]

CROSS REFERENCES: For the rules and regulations under the Securities Exchange Act of 1934, see part 240 of this chapter. For general requirements as to prospectuses, see §§ 230.400–230.434a.

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

The term *preceded by a prospectus*, as used in section 5(b)(2) of the Act with respect to any requirement for the delivery of a prospectus to security holders of a corporation or other person, in connection with transactions of the character specified in paragraph (a) of § 230.145, shall mean the delivery of a prospectus:

(a) Prior to the vote of security holders on such transactions; or,

(b) With respect to actions taken by consent, prior to the earliest date on which the corporate action may be taken; to all security holders of record