

non-convertible debt securities or non-convertible, non-participating preferred stock; or

(ii) The research report relates solely to the issuer's non-convertible debt securities or non-convertible, non-participating preferred stock, and the offering involves solely the issuer's common stock, or debt securities or preferred stock convertible into its common stock.

Instruction to paragraph (a)(1): If the issuer has filed a shelf registration statement under Rule 415(a)(1)(x) (§ 230.415(a)(1)(x)) or pursuant to General Instruction I.D. of Form S-3 or General Instruction I.C. of Form F-3 (§ 239.13 or § 239.33 of this chapter) with respect to multiple classes of securities, the conditions of paragraph (a)(1) of this section must be satisfied for the offering in which the broker or dealer is participating or will participate.

(2) The issuer as of the date of reliance on this section:

(i) Is required to file reports, and has filed all periodic reports required during the preceding 12 months (or such shorter time that the issuer was required to file such reports) on Forms 10-K (§ 249.310 of this chapter), 10-Q (§ 249.308a of this chapter), and 20-F (§ 249.220f of this chapter) pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); or

(ii) Is a foreign private issuer that:

(A) Meets all of the registrant requirements of Form F-3 other than the reporting history provisions of General Instructions I.A.1. and I.A.2(a) of Form F-3;

(B) Either:

(1) Satisfies the public float threshold in General Instruction I.B.1. of Form F-3; or

(2) Is issuing non-convertible securities, other than common equity, and the issuer meets the provisions of General Instruction I.B.2. of Form F-3 (referenced in 17 CFR 239.33 of this chapter); and

(C) Either:

(1) Has its equity securities trading on a designated offshore securities market as defined in Rule 902(b) (§ 230.902(b)) and has had them so traded for at least 12 months; or

(2) Has a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more.

(3) The broker or dealer publishes or distributes research reports on the types of securities in question in the regular course of its business; and

(4) The issuer is not, and during the past three years neither the issuer nor any of its predecessors was:

(i) A blank check company as defined in Rule 419(a)(2) (§ 230.419(a)(2));

(ii) A shell company, other than a business combination related shell company, each as defined in Rule 405 (§ 230.405); or

(iii) An issuer for an offering of penny stock as defined in Rule 3a51-1 of the Securities Exchange Act of 1934 (§ 240.3a51-1 of this chapter).

(b) *Rule 144A offerings.* If the conditions in paragraph (a) of this section are satisfied, a broker's or dealer's publication or distribution of a research report shall not be considered an offer for sale or an offer to sell a security or general solicitation or general advertising, in connection with an offering relying on Rule 144A (§ 230.144A).

(c) *Regulation S offerings.* If the conditions in paragraph (a) of this section are satisfied, a broker's or dealer's publication or distribution of a research report shall not:

(1) Constitute directed selling efforts as defined in Rule 902(c) (§ 230.902(c)) for offerings under Regulation S (§ 230.901 through § 230.905); or

(2) Be inconsistent with the offshore transaction requirement in Rule 902(h) (§ 230.902(h)) for offerings under Regulation S.

(d) *Definition of research report.* For purposes of this section, research report means a written communication, as defined in Rule 405, that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision.

[70 FR 44802, Aug. 3, 2005, as amended at 73 FR 967, Jan. 4, 2008; 76 FR 46617, Aug. 3, 2011]

§ 230.139 Publications or distributions of research reports by brokers or dealers distributing securities.

(a) *Registered offerings.* Under the conditions of paragraph (a)(1) or (a)(2) of this section, a broker's or dealer's publication or distribution of a research

report about an issuer or any of its securities shall be deemed for purposes of sections 2(a)(10) and 5(c) of the Act not to constitute an offer for sale or offer to sell a security that is the subject of an offering pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective, even if the broker or dealer is participating or will participate in the registered offering of the issuer's securities:

(1) *Issuer-specific research reports.* (i) The issuer either:

(A)(I) At the later of the time of filing its most recent Form S-3 (§ 239.13 of this chapter) or Form F-3 (§ 239.33 of this chapter) or the time of its most recent amendment to such registration statement for purposes of complying with section 10(a)(3) of the Act or, if no Form S-3 or Form F-3 has been filed, at the date of reliance on this section, meets the registrant requirements of such Form S-3 or Form F-3 and:

(i) At such date, meets the minimum float provisions of General Instruction I.B.1 of such Forms; or

(ii) At the date of reliance on this section, is, or if a registration statement has not been filed, will be, offering non-convertible securities, other than common equity, and meets the requirements for the General Instruction I.B.2. of Form S-3 or Form F-3 (referenced in 17 CFR 239.13 and 17 CFR 239.33 of this chapter); or

(iii) At the date of reliance on this section is a well-known seasoned issuer as defined in Rule 405 (§ 230.405), other than a majority-owned subsidiary that is a well-known seasoned issuer by virtue of paragraph (1)(ii) of the definition of well-known seasoned issuer in Rule 405; and

(2) As of the date of reliance on this section, has filed all periodic reports required during the preceding 12 months on Forms 10-K (§ 249.310 of this chapter), 10-Q (§ 249.308a of this chapter), and 20-F (§ 249.220f of this chapter) pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); or

(B) Is a foreign private issuer that as of the date of reliance on this section:

(I) Meets all of the registrant requirements of Form F-3 other than the reporting history provisions of General

Instructions I.A.1. and I.A.2(a) of Form F-3;

(2) Either:

(i) Satisfies the public float threshold in General Instruction I.B.1. of Form F-3; or

(ii) Is issuing non-convertible securities, other than common equity, and meets the provisions of General Instruction I.B.2. of Form F-3 (referenced in 17 CFR 239.33 of this chapter); and

(3) Either:

(i) Has its equity securities trading on a designated offshore securities market as defined in Rule 902(b) (§ 230.902(b)) and has had them so traded for at least 12 months; or

(ii) Has a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more;

(ii) The issuer is not and during the past three years neither the issuer nor any of its predecessors was:

(A) A blank check company as defined in Rule 419(a)(2) (§ 230.419(a)(2));

(B) A shell company, other than a business combination related shell company, each as defined in Rule 405 (§ 230.405); or

(C) An issuer for an offering of penny stock as defined in Rule 3a51-1 of the Securities Exchange Act of 1934 (§ 240.3a51-1 of this chapter); and

(iii) The broker or dealer publishes or distributes research reports in the regular course of its business and such publication or distribution does not represent the initiation of publication of research reports about such issuer or its securities or reinitiation of such publication following discontinuation of publication of such research reports.

(2) *Industry reports.* (i) The issuer is required to file reports pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 or satisfies the conditions in paragraph (a)(1)(i)(B) of this section;

(ii) The condition in paragraph (a)(1)(ii) of this section is satisfied;

(iii) The research report includes similar information with respect to a substantial number of issuers in the issuer's industry or sub-industry, or contains a comprehensive list of securities currently recommended by the broker or dealer;

(iv) The analysis regarding the issuer or its securities is given no materially

greater space or prominence in the publication than that given to other securities or issuers; and

(v) The broker or dealer publishes or distributes research reports in the regular course of its business and, at the time of the publication or distribution of the research report, is including similar information about the issuer or its securities in similar reports.

(b) *Rule 144A offerings.* If the conditions in paragraph (a)(1) or (a)(2) of this section are satisfied, a broker's or dealer's publication or distribution of a research report shall not be considered an offer for sale or an offer to sell a security or general solicitation or general advertising, in connection with an offering relying on Rule 144A (§230.144A).

(c) *Regulation S offerings.* If the conditions in paragraph (a)(1) or (a)(2) of this section are satisfied, a broker's or dealer's publication or distribution of a research report shall not:

(1) Constitute directed selling efforts as defined in Rule 902(c) (§230.902(c)) for offerings under Regulation S (§§230.901 through 230.905); or

(2) Be inconsistent with the offshore transaction requirement in Rule 902(h) (§230.902(h)) for offerings under Regulation S.

(d) *Definition of research report.* For purposes of this section, *research report* means a written communication, as defined in Rule 405, that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision.

Instruction to §230.139. Projections. A projection constitutes an analysis or information falling within the definition of research report. When a broker or dealer publishes or distributes projections of an issuer's sales or earnings in reliance on paragraph (a)(2) of this section, it must:

1. Have previously published or distributed projections on a regular basis in order to satisfy the "regular course of its business" condition;

2. At the time of publishing or disseminating a research report, be publishing or distributing projections with respect to that issuer; and

3. For purposes of paragraph (a)(2)(iii) of this section, include projections covering the same or similar periods with respect to ei-

ther a substantial number of issuers in the issuer's industry or sub-industry or substantially all issuers represented in the comprehensive list of securities contained in the research report.

[70 FR 44803, Aug. 3, 2005, as amended at 71 FR 7413, Feb. 13, 2006; 73 FR 967, Jan. 4, 2008; 76 FR 46617, Aug. 3, 2011]

§230.139a Publications by brokers or dealers distributing asset-backed securities.

The publication or distribution by a broker or dealer of information, an opinion or a recommendation with respect to asset-backed securities meeting the criteria of General Instruction I.B.5 of Form S-3 (§239.13 of this chapter) ("S-3 ABS") shall not be deemed to constitute an offer for sale or offer to sell S-3 ABS registered or proposed to be registered for purposes of sections 2(a)(10) and 5(c) of the Act (15 U.S.C. 77b(a)(10) and 77e(c)) (the "registered securities"), even if such broker or dealer is or will be a participant in the distribution of the registered securities, if the following conditions are met:

(a) The broker or dealer shall have previously published or distributed with reasonable regularity information, opinions or recommendations relating to S-3 ABS backed directly (or, with respect to securitizations of other securities, indirectly) by substantially similar collateral as that directly or indirectly backing S-3 ABS that is the subject of the information, opinion or recommendation that is proposed to be published or distributed.

(b) If the registered securities are proposed to be offered, offered or part of an unsold allotment or subscription, the information, opinion or recommendation shall not:

(1) Identify the registered securities;

(2) Give greater prominence to specific structural or collateral-related attributes of the registered securities than it gives to the same attributes of other asset-backed securities that it mentions; or

(3) Contain any *ABS informational and computational material* (as defined in §229.1101 of this chapter) relating to the registered securities.

(c) Sufficient information is available from one or more public sources to provide a reasonable basis for the view