OBELISK TECH SYSTEMS, INC.

MASTER FILING PACKET

§ 553(e) PETITION FOR RULEMAKING — REGULATION A

Date of Transmission: May 29, 2026

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Sender: James Hunter Poole, Executive Chairman & CEO, Obelisk Tech Systems, Inc. 875 Helicopter Road, Thomasville, Thomas County, Georgia 31757

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Recipient:

The Honorable Vanessa A. Countryman

Secretary

U.S. Securities and Exchange Commission

100 F Street NE

Washington, DC 20549

Companion Filing (Same Date):

A separate Petition for Rulemaking Pursuant to 5 U.S.C. § 553(e) and 17 C.F.R. § 201.192 has been transmitted on the same date to the Office of the Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, via separate Certified Mail, Return Receipt Requested. Both filings reference the same Master Administrative Record and are designed to surface this matter at both the legal-review desk and the rulemaking desk of the Commission simultaneously.

MASTER INDEX

This packet contains the following documents in the order shown. Page numbers are sequential within this composite PDF. Each tab is preceded by the cover letter and is incorporated by reference into both the cover letter and the Master Administrative Record.

Tab 3	SEC Release No. 33-9741 (2015 Regulation A+ adopting release, SEC version); Release 33-9741 as published in the Federal Register, 80 Fed. Reg. 21806 (Apr. 20, 2015); SEC Release No. 33-10884 (2020 exempt offering framework amendments)	The Commission's own stated intent and reasoned basis for the current Regulation A architecture.	963
Tab 4	OIRA Conclusion / View ICR Package for OMB Control No. 3235-0286 (Form 1-A); OMB Supporting Statement, Release No. 33-10532 (May 17, 2019); PRA ICR Documents (reginfo.gov supplementary index for 3235-0286); EDGAR Privacy Impact Assessment (Jan. 29, 2016) — establishes common-architecture treatment of Form 1-A and billion-dollar registrations	The Commission's own published Paperwork Reduction Act burden estimate for Form 1-A under OMB Control No.	34
Tab 5	SEC OIRA Combined Comments (N-CSR, Reg S, Reg BI, Rule 17a-2; all May 24, 2026)	Four contemporaneous filings on the same doctrinal framework, timestamped and confirmed in the OIRA Information Collection Review system on May 24, 2026: Form N-CSR (3235-0570), Regulation S (3235-0357), Regulation BI (3235-0762), and Rule 17a-2 (3235-0201).	13

DOCTRINE MAP

This map identifies which exhibit supports which analytical doctrine and which anticipated APA count. Doctrines are as set out in the Master Administrative Record dated May 24, 2026. Counts are as anticipated for the contemplated action under 5 U.S.C. §§ 702, 704, 706(1), and 706(2)(A) in the United States District Court for the District of Columbia.

Doctrine / Count	**Statutory / Case Authority**	**Supporting Exhibits in This Packet**
Counterfactual Participation (Doctrine E)	5 U.S.C. § 706(2)(A); 44 U.S.C. § 3506(c)(3); 5 C.F.R. § 1320.8(a)(4)	Master Record §§ III, IV, V; Exhibit A (sworn cost evidence); Tab 4 (OIRA Conclusion 3235-0286)
Officer Certification Substitution	17 C.F.R. §§ 240.13a-14, 240.15d-14; 28 U.S.C. § 1746; 18 U.S.C. §§ 1001, 1519	Cover Letter §§ II.6, III; Tab 2 (§ 239.90); Tab 3 (Release 33-9741 PRA section)
Secondary Market Lockout	17 C.F.R. §§ 240.15c2-11, 230.257; 15 U.S.C. § 78mm	Cover Letter § II.7 (Amendment 3); Tab 3 (Release 33-10884); Tab 5 (OIRA 17a-2 comment, Reg BI comment)
Cumulative Burden / Reasoned Decisionmaking	Motor Vehicle Mfrs. Ass'n v. State Farm, 463 U.S. 29; Business Roundtable v. SEC, 647 F.3d 1144	Exhibit A; Tab 3 (Release 33-9741 §§ III-V); Tab 4 (OIRA Conclusion, Supporting Statement)
Reliance Distortion / Baseline Defect	5 U.S.C. § 706(2)(A); Pub. L. 106-554 § 515 (Information Quality Act)	Exhibit A; Tab 4 (OIRA Conclusion 3235-0286; Supporting Statement Table 6); Tab 5 (parallel-track filings)
Failure to Conduct § 610 Periodic Review	5 U.S.C. § 610; 5 U.S.C. § 706(1); TRAC v. FCC, 750 F.2d 70 (D.C. Cir. 1984)	Cover Letter § III.11; Tab 1 (JOBS Act § 401 / 15 U.S.C. § 77c(b)(2)); Tab 3 (no § 610 review post-2020)
Contrary to Law (JOBS Act § 401 implementation)	5 U.S.C. § 706(2)(A); Pub. L. 112-106 § 401; 15 U.S.C. § 77c(b)(2)	Tab 1 (JOBS Act preamble + Title IV); Cover Letter §§ III.8-9; Master Record

Note on Master Administrative Record: This packet incorporates by reference the Notarized Master

Administrative Record and Sworn Declaration dated May 24, 2026, executed under penalty of perjury pursuant to 28 U.S.C. § 1746, including Exhibits A (Sworn Cost Evidence: $574,500 low / $1,111,250 mid-case / $1,923,500 high), B (CFR Backbone), and C (Sworn Declaration). The Master Record was previously transmitted to the Commission on May 24, 2026 in connection with parallel-track OIRA submissions under OMB Control Nos. 3235-0201, 3235-0357, 3235-0570, and 3235-0762, all timestamped and confirmed in the OIRA Information Collection Review system.

COVER LETTER

Petition for Rulemaking Pursuant to 5 U.S.C. § 553(e) and 17 C.F.R. § 201.192

The cover letter follows on the next page.

Obelisk Tech Systems, Inc.
James Hunter Poole, Executive Chairman and CEO
875 Helicopter Road
Thomasville, Thomas County, Georgia 31757
CAGE 9S0L8 | UEI U34MSJ6A6413
HUBZone-Certified | ITAR-Registered | Delaware C-Corporation

May 29, 2026

BY CERTIFIED MAIL — RETURN RECEIPT REQUESTED

The Honorable Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Petition for Rulemaking Pursuant to 5 U.S.C. § 553(e) and 17 C.F.R. § 201.192 — Three-Amendment Reconciliation of Regulation A (17 C.F.R. §§ 230.251–263), Form 1-A (17 C.F.R. § 239.90), Article 8 (17 C.F.R. § 210.8), Exhibit 12 Legality Opinion (17 C.F.R. § 229.601(b)(5)), and Broker-Dealer Quotation Requirements (17 C.F.R. § 240.15c2-11)

Dear Secretary Countryman:

Pursuant to the right of petition guaranteed by 5 U.S.C. § 553(e) and the procedural framework established by 17 C.F.R. § 201.192, Petitioner Obelisk Tech Systems, Inc., a HUBZone-certified, ITAR-registered Delaware C-corporation headquartered on generational family land in Thomas County, Georgia, hereby formally petitions the United States Securities and Exchange Commission to initiate notice-and-comment rulemaking adopting the three severable amendments to Regulation A and adjacent provisions identified in Section II below.

This Petition is supported by the Master Administrative Record and Sworn Declaration dated May 24, 2026, executed under penalty of perjury pursuant to 28 U.S.C. § 1746 (the "Master Record"), which is filed contemporaneously herewith and incorporated by reference. The Master Record contains the operative cost evidence, the GAO-Audited SEC Self-Representation Matrix, the OIG-Verified Internal Audit Record (SEC

OIG Reports 588, 589, and 590), seven analytical doctrines, the Officer Certification Substitution Doctrine, the Secondary Market Lockout Doctrine, the Office × Duty Matrix, and the Rule × Defect Matrix on which this Petition relies.

A separate Demand Letter and Notice of Intent to File Action Under the Administrative Procedure Act has been delivered contemporaneously to the Office of the General Counsel, addressing the same underlying defects. Both filings are dated and mailed the same day to preserve a complete administrative record.

I. Statutory Authority for Petition and Commission Action

1. Petitioner's Right to Petition. 5 U.S.C. § 553(e) provides that "[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule." 17 C.F.R. § 201.192 establishes the Commission's procedural framework for receiving, docketing, and responding to such petitions. Petitioner is an interested person within the meaning of § 553(e): Petitioner is a HUBZone-certified small business issuer directly economically excluded from the Regulation A pathway by the cumulative compliance stack identified in this Petition.

2. Commission's Affirmative Exemptive Authority. The Commission possesses affirmative statutory authority to adopt each of the three amendments requested below without additional legislation. Specifically: 15 U.S.C. § 77z-3 authorizes the Commission to "conditionally or unconditionally exempt any person, security, or transaction" from any provision of the Securities Act, provided the exemption is necessary or appropriate in the public interest and consistent with the protection of investors. 15 U.S.C. § 78mm grants parallel exemptive authority for Exchange Act provisions, including 17 C.F.R. § 240.15c2-11. The Commission has exercised these authorities repeatedly across its history, including in the Consolidated Audit Trail exemptive orders that establish the operative cost-reduction-with-functionality-preserved precedent.

3. Co-Equal Statutory Mandates. 15 U.S.C. § 77b(b) (Securities Act) and 15 U.S.C. § 78c(f) (Exchange Act) impose co-equal mandates: when the Commission engages in rulemaking under either Act, it must consider, in addition to investor protection, whether the action will promote efficiency, competition, and capital formation. The Commission's current Regulation A compliance architecture produces the operational opposite of the capital-formation half of the mandate, as established in Section III of the Master Record.

4. Reasoned-Decisionmaking Standard. Commission action on this Petition is subject to reasoned-decisionmaking review under 5 U.S.C. § 706(2)(A). Controlling authority includes Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29 (1983), and Business Roundtable v. SEC, 647 F.3d 1144 (D.C. Cir. 2011). Continued reliance on the published Form 1-A burden estimate under OMB Control No. 3235-0286 in light of sworn contradictory evidence (Exhibit A to the Master Record) presents a reconciliation question the Commission must resolve in its response.

II. Three-Amendment Relief Sought

Petitioner respectfully requests that the Commission initiate notice-and-comment rulemaking under 5 U.S.C. § 553 to adopt the following three amendments. Each amendment is independently severable; the Commission may adopt any one, any two, or all three. Each amendment independently advances the § 77b(b) and § 78c(f) co-equal mandate without reducing any existing disclosure obligation.

5. Amendment 1 — Scaled Audit Alternative under 17 C.F.R. § 210.8. Amend 17 C.F.R. § 210.8 to

permit independent CPA review conducted under Statements on Standards for Accounting and Review Services (SSARS), including SSARS 21, in lieu of full audit, for Regulation A Tier 2 issuers with offering

size below $20 million and prior-year revenue below $10 million. The Commission has already accepted SSARS CPA review as sufficient accountability for Regulation Crowdfunding offerings under 17 C.F.R. § 227.201(t). This Amendment extends an accountability framework the Commission has already adopted to an analogous small-issuer context. The independent CPA remains subject to AICPA independence requirements and professional discipline. **Statutory authority:** 15 U.S.C. § 77z-3. **Precedent:** 17 C.F.R. § 227.201(t).

6. Amendment 2 — Officer Certification Substitution under 17 C.F.R. §§ 239.90 and 229.601(b)(5). Amend 17 C.F.R. §§ 239.90 and 229.601(b)(5) to permit officer certification under penalty of perjury pursuant to 28 U.S.C. § 1746, executed by the principal executive officer and the principal financial officer of the issuer, in lieu of the Exhibit 12 third-party attorney legality opinion, for offerings below $10 million. The substituted accountability framework rests on the federal liability statutes the Commission has already accepted as sufficient for billion-dollar public-company disclosures under the Sarbanes-Oxley § 302 framework at 17 C.F.R. §§ 240.13a-14 and 240.15d-14: 18 U.S.C. § 1001 (False Statements Act); 18 U.S.C. § 1519 (Falsification of Records in Federal Investigations); 15 U.S.C. § 78ff (Exchange Act criminal penalties); and 28 U.S.C. § 1746 (unsworn declarations under penalty of perjury). Where the Commission accepts officer certification for billion-dollar disclosures, the consistency principle articulated in State Farm warrants extension of the same accountability mechanism to $10 million Regulation A offerings. **Statutory authority:** 15 U.S.C. § 77z-3. **Precedent:** 17 C.F.R. §§ 240.13a-14 and 240.15d-14.

7. Amendment 3 — Express Safe Harbor under 17 C.F.R. § 240.15c2-11. Amend 17 C.F.R. § 240.15c2-11 to provide an express safe harbor stating that a Regulation A Tier 2 issuer current on its ongoing reporting obligations under 17 C.F.R. § 230.257 (Forms 1-K, 1-SA, and 1-U) conclusively satisfies the current-information requirement of § 240.15c2-11. The 2020 amendments to § 240.15c2-11 expressly intended to ensure that current information is available to broker-dealers quoting securities; § 230.257 Tier 2 filings deliver exactly that current information, on a continuing basis, under direct Commission qualification. The safe harbor avoids the duplicative attorney-opinion and IDS-submission costs that have, in practice, suppressed secondary-market quotation for Regulation A Tier 2 issuers. The safe harbor does not reduce the substantive current-information requirement; it aligns rule administration with rule purpose. **Statutory authority:** 15 U.S.C. § 78mm. **Precedent:** Consolidated Audit Trail exemptive orders (cost-reduction-with-functionality-preserved framework).

III. Reasoned Basis — JOBS Act Implementation Defect and § 706(2)(A) Concerns

8. JOBS Act Statutory Design. Section 401 of the Jumpstart Our Business Startups Act of 2012, Pub. L. 112-106, codified in relevant part at 15 U.S.C. § 77c(b)(2), directed the Commission to expand Regulation A to make a disclosure-rich public-capital pathway accessible to small issuers and retail investors as a deliberate democratization mechanism. Congress's design rests on a structural premise: small issuers gain access to non-accredited retail capital through the disclosure-rich Regulation A pathway, and non-accredited retail investors gain access to disclosure-rich investments they cannot reach through Regulation D § 506(c), which forecloses them under 17 C.F.R. § 230.501(a).

9. Operational Inversion of the JOBS Act Design. The Commission's current Regulation A compliance architecture produces the operational opposite of the JOBS Act design. The cumulative interaction of 17 C.F.R. § 210.8, 17 C.F.R. § 229.601(b)(5), 17 C.F.R. § 240.15c2-11, the Form 1-A burden assumptions under OMB Control No. 3235-0286, and the ongoing disclosure obligations under 17 C.F.R. § 230.257 creates a cumulative compliance burden documented under penalty of perjury in Exhibit A to the Master Record at $574,500 (low), $1,111,250 (mid-case), and $1,923,500 (high). The mid-case is submitted as the operative figure for Paperwork Reduction Act burden estimation under 5 C.F.R. § 1320.8(a)(4). The economic effect is to push small issuers out of the disclosure-rich Regulation A pathway and into the disclosure-poor Regulation D § 506(c) pathway, where non-accredited retail investors are statutorily foreclosed.

10. Arbitrary and Capricious Concerns. Continued administration of the present compliance stack, in light of sworn contradictory evidence and the OIG-corroborated capacity-and-data-quality findings catalogued in the Master Record, engages multiple § 706(2)(A) concerns: (a) the published Form 1-A burden estimate is contradicted by sworn external evidence and is unsupported by methodology produced into the record; (b) the rule structure imposes more procedural protection on smaller offerings than on materially larger Regulation D and registered offerings, inverting proportionality; (c) the Commission has not articulated a reasoned basis for declining to extend accountability frameworks (SSARS review, SOX § 302 certification, § 230.257 continuing-disclosure compliance) that the Commission has already accepted as sufficient in analogous contexts; and (d) the cumulative architecture frustrates the JOBS Act statutory purpose Congress set in 15 U.S.C. § 77c(b)(2). Each concern is independently sufficient under State Farm and Business Roundtable to warrant reconsideration.

11. Failure-to-Act Concerns. Independent of § 706(2)(A), 5 U.S.C. § 706(1) authorizes a reviewing court to compel agency action unlawfully withheld or unreasonably delayed. The Commission has not undertaken Regulatory Flexibility Act § 610 periodic review of 17 C.F.R. §§ 230.251–263 or 17 C.F.R. § 240.15c2-11 in the period since the 2020 amendments and since EO 14215 (February 18, 2025) removed the Commission's exemption from EO 12866. The Commission's own Inspector General has documented, in OIG Report No. 588 (September 29, 2025), that 53 percent of SEC staff identify insufficient cost-benefit data as a quality factor and that the Office of Chief Accountant and the Office of the Advocate for Small Business Capital Formation are documented as under-engaged in rulemaking. These findings establish, in the Commission's own audit record, the operational facts on which a § 706(1) unreasonable-delay analysis would proceed.

IV. Severability and Disclosure-Standard Preservation

12. Severability. Each Amendment is independently severable from the others. The Commission may adopt any one, any two, or all three. Each Amendment independently advances the § 77b(b) and § 78c(f) co-equal mandate.

13. Disclosure-Standard Preservation. No Amendment reduces any existing disclosure standard. Each Amendment substitutes an equally accountable but proportionate compliance mechanism. The Commission's own SOX § 302 framework, Regulation Crowdfunding tiered-review framework, and §

230.257 continuing-disclosure framework supply the operative templates. The bad-actor disqualification framework at 17 C.F.R. § 230.262, the qualification standards at 17 C.F.R. §§ 230.251–253, the ongoing disclosure obligations at 17 C.F.R. § 230.257, and the Commission's enforcement authority under § 17(a) of the Securities Act and § 10(b) and Rule 10b-5 of the Exchange Act are unaffected.

V. Eight Decision Questions Requiring Written Response

Pursuant to 5 U.S.C. § 555(e) and consistent with the Master Record (Agency Decision Required section), Petitioner respectfully requests written response to each of the following questions. Each question is independently answerable yes or no. Continued silence on any question is itself an answer for purposes of the administrative record and any subsequent APA review.

- Q1. Does the Commission accept the sworn cost evidence in Exhibit A to the Master Record as the operative real-world cost record for purposes of Form 1-A burden estimation under 5 C.F.R. § 1320.8(a)(4)?
- Q2. Does the Commission concede that the published Form 1-A burden estimate, in light of sworn contradictory evidence, requires revision or formal justification of retention?
- Q3. Does the Commission acknowledge its affirmative exemptive authority under 15 U.S.C. §§ 77z-3 and 78mm with respect to the three amendments identified herein?
- Q4. Will the Commission initiate notice-and-comment rulemaking under APA § 553 on the three identified amendments within 180 days of this Petition?
- Q5. Will the Commission initiate RFA § 610 periodic review of 17 C.F.R. §§ 230.251–263 and 17 C.F.R. § 240.15c2-11 within 90 days?
- Q6. Will the Commission's Information Quality Officer formally respond to a forthcoming Information Quality Act correction request directed to the Form 1-A burden estimate?
- Q7. Will the Office of the Investor Advocate include the sworn evidence in its next annual report to Congress under 15 U.S.C. § 78d(g)?
- Q8. Will the Office of the Advocate for Small Business Capital Formation include the sworn evidence in its next annual report under 15 U.S.C. § 78pp?

VI. Requested Data Production

Petitioner respectfully requests that, in connection with the Commission's response to this Petition, the Commission produce: (a) the methodology and underlying data supporting the Form 1-A burden estimate under OMB Control No. 3235-0286; (b) the DERA analytical assumptions used in the most recent economic analysis cycle on Regulation A; and (c) historical Regulation A Tier 2 participation data disaggregated by issuer revenue, geography, HUBZone status, and defense-relevance, for fiscal years 2020 through 2025.

VII. Procedural Requests

14. Docketing. Petitioner requests that this Petition be docketed under 17 C.F.R. § 201.192 and assigned a Commission file number for tracking and public-record purposes.

15. Public Posting. Petitioner requests that this Petition and the Master Record be posted to the

Commission's public petitions docket consistent with the Commission's customary practice for § 553(e) submissions.

16. Written Response. Petitioner requests written response within 180 days under 5 U.S.C. § 555(e). Continued silence beyond that period will be treated as constructive denial for purposes of subsequent administrative-law analysis under TRAC v. FCC, 750 F.2d 70 (D.C. Cir. 1984), and progeny.

17. Concurrent OGC Filing. Petitioner has, on the same date as this Petition, transmitted to the Office of the General Counsel a separate Demand Letter and Notice of Intent to File Action Under the Administrative Procedure Act addressing the same underlying defects. The parallel filings are designed to surface this matter at both the rulemaking and legal-review desks of the Commission simultaneously.

VIII. Conclusion

The Master Administrative Record places the operative facts before the Commission in sworn form. The three-Amendment Relief Sought identifies the operative reconciliation path. The Commission's own exemptive authority supplies the operative legal mechanism. The Commission's own Chairman, on March 9, 2026, identified scaling disclosure with company size as one of his highest priorities and invited dialogue with those who operate under the rules. Petitioner is one such operator. This Petition is that dialogue, in sworn form, on the administrative record.

Petitioner respectfully requests that the Commission initiate notice-and-comment rulemaking on the three identified Amendments within 180 days of the date of this Petition.

Respectfully submitted,

_____

James Hunter Poole
Executive Chairman and Chief Executive Officer
Obelisk Tech Systems, Inc.
875 Helicopter Road, Thomasville, Georgia 31757
CAGE 9S0L8 | UEI U34MSJ6A6413

Enclosure: Master Administrative Record and Sworn Declaration dated May 24, 2026 (executed under 28 U.S.C. § 1746), with Exhibits A (Cost Proof), B (CFR Backbone), and C (Sworn Declaration).

cc: Of ice of the General Counsel, U.S. Securities and Exchange Commission (via separate certified mail, with Demand Letter and Notice of Intent to File Action Under the Administrative Procedure Act)

TAB 1

STATUTORY BACKBONE

The statute Congress wrote, supplying both the affirmative authority for the requested action and the limit on Commission discretion. Title IV § 401 of the JOBS Act (Pub. L. 112-106), codified at 15 U.S.C. § 77c(b)(2),

is the operative provision. The Act's preamble — 'to increase American job creation and economic growth by improving access to the public capital markets' — is the textually expressed congressional purpose against which every Commission implementation choice is measured under State Farm and Business Roundtable.

Documents in this tab:

• 1.1 — Jumpstart Our Business Startups Act (Pub. L. 112-106, as enacted Apr. 5, 2012) • 1.2 — 15 U.S.C. § 77c (Classes of securities under this subchapter, as codified)

JUMPSTART OUR BUSINESS STARTUPS ACT

Public Law 112–106
112th Congress

An Act

Apr. 5, 2012
[H.R. 3606]

Jumpstart Our Business Startups Act.
15 USC 78a note.

To increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Jumpstart Our Business Startups Act".

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

TITLE I—REOPENING AMERICAN CAP ITAL MARKETS TO EMERGING GROWTH COMPANIES

SEC. 101. DEFINITIONS.

(a) SECURITIES ACT OF 1933.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended by adding at the end the following:

"(19) The term 'emerging growth company' means an issuer that had total annual gross revenues of less than $1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Con sumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) during its most recently completed fiscal year. An issuer that is an emerging growth company as of the first day of that fiscal year shall continue to be deemed an emerging growth company until the earliest of—

"(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of $1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) or more;

"(B) the last day of the fiscal year of the issuer fol lowing the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under this title;

"(C) the date on which such issuer has, during the previous 3-year period, issued more than $1,000,000,000 in non-convertible debt; or

"(D) the date on which such issuer is deemed to be a 'large accelerated filer', as defined in section 240.12b–2 of title 17, Code of Federal Regulations, or any successor thereto.".

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) by redesignating paragraph (77), as added by section 941(a) of the Investor Protection and Securities Reform Act of 2010 (Public Law 111–203, 124 Stat. 1890), as paragraph (79); and

(2) by adding at the end the following:

"(80) EMERGING GROWTH COMPANY.—The term 'emerging growth company' means an issuer that had total annual gross revenues of less than $1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) during its most recently completed fiscal year. An issuer that is an emerging growth

company as of the first day of that fiscal year shall continue to be deemed an emerging growth company until the earliest of—

"(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of $1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) or more;

"(B) the last day of the fiscal year of the issuer following the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under the Securities Act of 1933;

"(C) the date on which such issuer has, during the previous 3-year period, issued more than $1,000,000,000 in non-convertible debt; or

"(D) the date on which such issuer is deemed to be a 'large accelerated filer', as defined in section 240.12b–2 of title 17, Code of Federal Regulations, or any successor thereto.".

Applicability.
15 USC 78c note.

15 USC 77b note.

Time period.

(c) OTHER DEFINITIONS.—As used in this title, the following definitions shall apply:
(1) COMMISSION.—The term "Commission" means the Securities and Exchange Commission. (2) INITIAL PUBLIC OFFERING DATE.—The term "initial public offering date" means the date of the first sale of common equity securities of an issuer pursuant to an effective registration statement under the Securities Act of 1933. (d) EFFECTIVE DATE.—Notwithstanding section 2(a)(19) of the Securities Act of 1933 and section 3(a)(80) of the Securities Exchange Act of 1934, an issuer shall not be an emerging growth company for purposes of such Acts if the first sale of common equity securities of such issuer pursuant to an effective registration statement under the Securities Act of 1933 occurred on or before December 8, 2011.

SEC. 102. DISCLOSURE OBLIGATIONS.

(a) EXECUTIVE COMPENSATION.—

(1) EXEMPTION.—Section 14A(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78n–1(e)) is amended—
(A) by striking "The Commission may" and inserting the following:
"(1) IN GENERAL.—The Commission may";
(B) by striking "an issuer" and inserting "any other issuer"; and
(C) by adding at the end the following:
"(2) TREATMENT OF EMERGING GROWTH COMPANIES.— "(A) IN GENERAL.—An emerging growth company shall be exempt from the requirements of subsections (a) and (b). "(B) COMPLIANCE AFTER TERMINATION OF EMERGING GROWTH COMPANY TREATMENT.—An issuer that was an emerging growth company but is no longer an emerging growth company shall include the first separate resolution described under subsection (a)(1) not later than the end of— "(i) in the case of an issuer that was an emerging growth company for less than 2 years after the date

of first sale of common equity securities of the issuer pursuant to an effective registration statement under the Securities Act of 1933, the 3-year period beginning on such date; and

"(ii) in the case of any other issuer, the 1-year period beginning on the date the issuer is no longer an emerging growth company.".

(2) PROXIES.—Section 14(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(i)) is amended by inserting ", for any issuer other than an emerging growth company," after "including".

(3) COMPENSATION DISCLOSURES.—Section 953(b)(1) of the Investor Protection and Securities Reform Act of 2010 (Public Law 111–203; 124 Stat. 1904) is amended by inserting ", other than an emerging growth company, as that term is defined in section 3(a) of the Securities Exchange Act of 1934," after "require each issuer".

(b) FINANCIAL DISCLOSURES AND ACCOUNTING PRONOUNCEMENTS.— (1) SECURITIES ACT OF 1933.—Section 7(a) of the Securities Act of 1933 (15 U.S.C. 77g(a)) is amended—
(A) by striking "(a) The registration" and inserting the following:
"(a) INFORMATION REQUIRED IN REGISTRATION STATEMENT.—
"(1) IN GENERAL.—The registration"; and
(B) by adding at the end the following:
"(2) TREATMENT OF EMERGING GROWTH COMPANIES.—An emerging growth company—
"(A) need not present more than 2 years of audited financial statements in order for the registration statement of such emerging growth company with respect to an initial public offering of its common equity securities to be effective, and in any other registration statement to be filed with the Commission, an emerging growth company need not present selected financial data in accordance with section 229.301 of title 17, Code of Federal Regulations, for any period prior to the earliest audited period presented in connection with its initial public offering; and
"(B) may not be required to comply with any new or revised financial accounting standard until such date that a company that is not an issuer (as defined under section 2(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(a))) is required to comply with such new or revised accounting standard, if such standard applies to companies that are not issuers.".
(2) SECURITIES EXCHANGE ACT OF 1934.—Section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a)) is amended by adding at the end the following: "In any registration statement, periodic report, or other reports to be filed

with the Commission, an emerging growth company need not present selected financial data in accordance with section 229.301 of title 17, Code of Federal Regulations, for any period prior to the earliest audited period presented in connection with its first registration statement that became effective under this Act or the Securities Act of 1933 and, with respect to any such statement or reports, an emerging growth company may not be required to comply with any new or revised financial

15 USC 78*l* note.

accounting standard until such date that a company that is not an issuer (as defined under section 2(a) of the Sarbanes Oxley Act of 2002 (15 U.S.C. 7201(a))) is required to comply with such new or revised accounting standard, if such standard applies to companies that are not issuers.".

15 USC 77g note.

(c) OTHER DISCLOSURES.—An emerging growth company may comply with section 229.303(a) of title 17, Code of Federal Regulations, or any successor thereto, by providing information required by such section with respect to the financial statements of the emerging growth company for each period presented pursuant to section 7(a) of the Securities Act of 1933 (15 U.S.C. 77g(a)). An emerging growth company may comply with section 229.402 of title 17, Code of Federal Regulations, or any successor thereto, by disclosing the same information as any issuer with a market value of outstanding voting and nonvoting common equity held by non-affiliates of less than $75,000,000.

SEC. 103. INTERNAL CONTROLS AUDIT.

Section 404(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262(b)) is amended by inserting ", other than an issuer that is an emerging growth company (as defined in section 3 of the Securities Exchange Act of 1934)," before "shall attest to".

SEC. 104. AUDITING STANDARDS.

Section 103(a)(3) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7213(a)(3)) is amended by adding at the end the following: "(C) TRANSITION PERIOD FOR EMERGING GROWTH COMPANIES.—Any rules of the Board requiring mandatory audit firm rotation or a supplement to the auditor's report in which the auditor would be required to provide additional information about the audit and the financial statements of the issuer (auditor discussion and analysis) shall not apply to an audit of an emerging growth company, as defined in section 3 of the Securities Exchange Act of 1934. Any additional rules adopted by the Board after the date of enactment of this subparagraph shall not apply to an audit of any emerging growth company, unless the Commission determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.".

SEC. 105. AVAILABILITY OF INFORMATION ABOUT EMERGING GROWTH COMPANIES.

(a) PROVISION OF RESEARCH.—Section 2(a)(3) of the Securities Act of 1933 (15 U.S.C. 77b(a)(3)) is amended by adding at the end the following: "The publication or distribution by a broker or dealer of a research report about an emerging growth company that is the subject of a proposed public offering of the common equity securities of such emerging growth company pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective shall be deemed for purposes of paragraph (10) of this subsection and section 5(c) not to constitute an offer for sale or offer to sell a security, even if the broker or dealer is participating or will participate in the registered offering of the securities of the issuer. As used in this paragraph, the term 'research report' means a written, electronic, or oral communication

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.".

(b) SECURITIES ANALYST COMMUNICATIONS.—Section 15D of the Securities Exchange Act of 1934 (15 U.S.C. 78o–6) is amended— (1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

"(c) LIMITATION.—Notwithstanding subsection (a) or any other provision of law, neither the Commission nor any national securities association registered under section 15A may adopt or maintain any rule or regulation in connection with an initial public offering of the common equity of an emerging growth company—

"(1) restricting, based on functional role, which associated persons of a broker, dealer, or member of a national securities association, may arrange for communications between a securities analyst and a potential investor; or

"(2) restricting a securities analyst from participating in any communications with the management of an emerging growth company that is also attended by any other associated person of a broker, dealer, or member of a national securities association whose functional role is other than as a securities analyst.".

(c) EXPANDING PERMISSIBLE COMMUNICATIONS.—Section 5 of the Securities Act of 1933 (15 U.S.C. 77e) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

"(d) LIMITATION.—Notwithstanding any other provision of this section, an emerging growth company or any person authorized to act on behalf of an emerging growth company may engage in oral or written communications with potential investors that are qualified institutional buyers or institutions that are accredited investors, as such terms are respectively defined in section 230.144A and section 230.501(a) of title 17, Code of Federal Regulations, or any successor thereto, to determine whether such investors might have an interest in a contemplated securities offering, either prior to or following the date of filing of a registration statement with respect to such securities with the Commission, subject to the requirement of subsection (b)(2).".

(d) POST OFFERING COMMUNICATIONS.—Neither the Commission nor any national securities association registered under section 15A of the Securities Exchange Act of 1934 may adopt or maintain any rule or regulation prohibiting any broker, dealer, or member of a national securities association from publishing or distributing any research report or making a public appearance, with respect to the securities of an emerging growth company, either—

(1) within any prescribed period of time following the initial public offering date of the emerging growth company; or

(2) within any prescribed period of time prior to the expiration date of any agreement between the broker, dealer, or member of a national securities association and the emerging growth company or its shareholders that restricts or prohibits the sale of securities held by the emerging growth company or its shareholders after the initial public offering date.

15 USC 78o–6 note.

SEC. 106. OTHER MATTERS.

(a) DRAFT REGISTRATION STATEMENTS.—Section 6 of the Securi ties Act of 1933 (15 U.S.C. 77f) is amended by adding at the end the following:

"(e) EMERGING GROWTH COMPANIES.—

Public information. Deadline.

Determination. Deadline.

15 USC 78c note.

"(1) IN GENERAL.—Any emerging growth company, prior to its initial public offering date, may confidentially submit to the Commission a draft registration statement, for confiden tial nonpublic review by the staff of the Commission prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed with the Commission not later than 21 days before the date on which the issuer conducts a road show, as such term is defined in section 230.433(h)(4) of title 17, Code of Federal Regulations, or any successor thereto.

"(2) CONFIDENTIALITY.—Notwithstanding any other provi sion of this title, the Commission shall not be compelled to disclose any information provided to or obtained by the Commis sion pursuant to this subsection. For purposes of section 552 of title 5, United States Code, this subsection shall be consid ered a statute described in subsection (b)(3)(B) of such section 552. Information described in or obtained pursuant to this subsection shall be deemed to constitute confidential informa tion for purposes of section 24(b)(2) of the Securities Exchange Act of 1934.".

(b) TICK SIZE.—Section 11A(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78k–1(c)) is amended by adding at the end the following new paragraph:

"(6) TICK SIZE.—

"(A) STUDY AND REPORT.—The Commission shall con duct a study examining the transition to trading and quoting securities in one penny increments, also known as decimalization. The study

shall examine the impact that decimalization has had on the number of initial public offerings since its implementation relative to the period before its implementation. The study shall also examine the impact that this change has had on liquidity for small and middle capitalization company securities and whether there is sufficient economic incentive to support trading operations in these securities in penny increments. Not later than 90 days after the date of enactment of this paragraph, the Commission shall submit to Congress a report on the findings of the study.
"(B) DESIGNATION.—If the Commission determines that the securities of emerging growth companies should be quoted and traded using a minimum increment of greater than $0.01, the Commission may, by rule not later than 180 days after the date of enactment of this paragraph, designate a minimum increment for the securities of emerging growth companies that is greater than $0.01 but less than $0.10 for use in all quoting and trading of securities in any exchange or other execution venue.".

SEC. 107. OPT-IN RIGHT FOR EMERGING GROWTH COMPANIES.

(a) IN GENERAL.—With respect to an exemption provided to emerging growth companies under this title, or an amendment made by this title, an emerging growth company may choose to

forgo such exemption and instead comply with the requirements that apply to an issuer that is not an emerging growth company. (b) SPECIAL RULE.—Notwithstanding subsection (a), with respect to the extension of time to comply with new or revised financial accounting standards provided under section 7(a)(2)(B) of the Securities Act of 1933 and section 13(a) of the Securities Exchange Act of 1934, as added by section 102(b), if an emerging growth company chooses to comply with such standards to the same extent that a non-emerging growth company is required to comply with such standards, the emerging growth company—

(1) must make such choice at the time the company is first required to file a registration statement, periodic report, or other report with the Commission under section 13 of the Securities Exchange Act of 1934 and notify the Securities and Exchange Commission of such choice;
(2) may not select some standards to comply with in such manner and not others, but must comply with all such standards to the same extent that a non-emerging growth company is required to comply with such standards; and
(3) must continue to comply with such standards to the same extent that a non-emerging growth company is required to comply with such standards for as long as the company remains an emerging growth company.

SEC. 108. REVIEW OF REGULATION S-K.

(a) REVIEW.—The Securities and Exchange Commission shall conduct a review of its Regulation S-K (17 CFR 229.10 et seq.) to— (1) comprehensively analyze the current registration requirements of such regulation; and
(2) determine how such requirements can be updated to modernize and simplify the registration process and reduce the costs and other burdens associated with these requirements for issuers who are emerging growth companies.
(b) REPORT.—Not later than 180 days after the date of enactment of this title, the Commission shall transmit to Congress a report of the review conducted under subsection (a). The report shall include the specific recommendations of the Commission on how to streamline the registration process in order to make it more efficient and less burdensome for the Commission and for prospective issuers who are emerging growth companies.

TITLE II—ACCESS TO CAPITAL FOR JOB CREATORS

SEC. 201. MODIFICATION OF EXEMPTION.

(a) MODIFICATION OF RULES.—
(1) Not later than 90 days after the date of the enactment of this Act, the Securities and Exchange Commission shall revise its rules issued in section 230.506 of title 17, Code of Federal Regulations, to provide that the prohibition against general solicitation or general advertising contained in section

230.502(c) of such title shall not apply to offers and sales of securities made pursuant to section 230.506, provided that all purchasers of the securities are accredited investors. Such rules shall require the issuer to take reasonable steps to verify
Notification.

15 USC 77d note. Deadlines.

that purchasers of the securities are accredited investors, using such methods as determined by the Commission. Section 230.506 of title 17, Code of Federal Regulations, as revised pursuant to this section, shall continue to be treated as a regulation issued under section 4(2) of the Securities Act of 1933 (15 U.S.C. 77d(2)).

(2) Not later than 90 days after the date of enactment of this Act, the Securities and Exchange Commission shall revise subsection (d)(1) of section 230.144A of title 17, Code of Federal Regulations, to provide that securities sold under such revised exemption may be offered to persons other than qualified institutional buyers, including by means of general solicitation or general advertising, provided that securities are sold only to persons that the seller and any person acting on behalf of the

seller reasonably believe is a qualified institu tional buyer.

(b) CONSISTENCY IN INTERPRETATION.—Section 4 of the Securi ties Act of 1933 (15 U.S.C. 77d) is amended— (1) by striking "The provisions of section 5" and inserting "(a) The provisions of section 5"; and

(2) by adding at the end the following:

"(b) Offers and sales exempt under section 230.506 of title 17, Code of Federal Regulations (as revised pursuant to section 201 of the Jumpstart Our Business Startups Act) shall not be deemed public offerings under the Federal securities laws as a result of general advertising or general solicitation.".

(c) EXPLANATION OF EXEMPTION.—Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended—

(1) by striking "The provisions of section 5" and inserting "(a) The provisions of section 5"; and

(2) by adding at the end the following:

"(b)(1) With respect to securities offered and sold in compliance with Rule 506 of Regulation D under this Act, no person who meets the conditions set forth in paragraph (2) shall be subject to registration as a broker or dealer pursuant to section 15(a)(1) of this title, solely because—

"(A) that person maintains a platform or mechanism that permits the offer, sale, purchase, or negotiation of or with respect to securities, or permits general solicita tions, general advertisements, or similar or related activi ties by issuers of such securities, whether online, in person, or through any other means;

"(B) that person or any person associated with that person co-invests in such securities; or

"(C) that person or any person associated with that person provides ancillary services with respect to such secu rities.

Applicability.

"(2) The exemption provided in paragraph (1) shall apply to any person described in such paragraph if—

"(A) such person and each person associated with that person receives no compensation in connection with the pur chase or sale of such security; "(B) such person and each person associated with that person does not have possession of customer funds or securities in connection with the purchase or sale of such security; and "(C) such person is not subject to a statutory disqualifica tion as defined in section 3(a)(39) of this title and does not

have any person associated with that person subject to such a statutory disqualification.

"(3) For the purposes of this subsection, the term 'ancillary services' means—

"(A) the provision of due diligence services, in connection with the offer, sale, purchase, or negotiation of such security, so long as such services do not include, for separate compensa tion, investment advice or recommendations to issuers or inves tors; and

"(B) the provision of standardized documents to the issuers and investors, so long as such person or entity does not nego tiate the terms of the issuance for

and on behalf of third parties and issuers are not required to use the standardized documents as a condition of using the service.".

TITLE III—CROWDFUNDING

SEC. 301. SHORT TITLE.

This title may be cited as the "Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2012" or the "CROWDFUND Act".

SEC. 302. CROWDFUNDING EXEMPTION.

(a) SECURITIES ACT OF 1933.—Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended by adding at the end the following: "(6) transactions involving the offer or sale of securities by an issuer (including all entities controlled by or under common control with the issuer), provided that—

"(A) the aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, is not more than $1,000,000;

"(B) the aggregate amount sold to any investor by an issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, does not exceed—

"(i) the greater of $2,000 or 5 percent of the annual income or net worth of such investor, as applicable, if either the annual income or the net worth of the investor is less than $100,000; and

"(ii) 10 percent of the annual income or net worth of such investor, as applicable, not to exceed a maximum aggregate amount sold of $100,000, if either the annual income or net worth of the investor is equal to or more than $100,000;

"(C) the transaction is conducted through a broker or funding portal that complies with the requirements of section 4A(a); and

"(D) the issuer complies with the requirements of section 4A(b).".

(b) REQUIREMENTS TO QUALIFY FOR CROWDFUNDING EXEMPTION.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 4 the following:

Definition.

Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2012.
15 USC 77a note.

15 USC 77d–1. Regulations.

Deadline.

Time period. Confidentiality.

"SEC. 4A. REQUIREMENTS WITH RESPECT TO CERTAIN SMALL TRANS ACTIONS.

"(a) REQUIREMENTS ON INTERMEDIARIES.—A person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others pursuant to section 4(6) shall— "(1) register with the Commission as—
"(A) a broker; or
"(B) a funding portal (as defined in section 3(a)(80) of the Securities Exchange Act of 1934);
"(2) register with any applicable self-regulatory organiza tion (as defined in section 3(a)(26) of the Securities Exchange Act of 1934);
"(3) provide such disclosures, including disclosures related to risks and other investor education materials, as the Commis sion shall, by rule, determine appropriate;
"(4) ensure that each investor—
"(A) reviews investor-education information, in accord ance with standards established by the Commission, by rule;
"(B) positively affirms that the investor understands that the investor is risking the loss of the entire invest ment, and that the investor could bear such a loss; and "(C) answers questions demonstrating—
"(i) an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers;
"(ii) an understanding of the risk of illiquidity;
and
"(iii) an understanding of such other matters as the Commission determines appropriate, by rule;
"(5) take such measures to reduce the risk of fraud with respect to such transactions, as established by the Commission, by rule, including obtaining a background and securities enforcement regulatory history check on each officer, director, and person holding more than 20 percent of the outstanding equity of every issuer whose securities are offered by such person;
"(6) not later than 21 days prior to the first day on which securities are sold to any investor (or such other period as the Commission may establish), make available to the Commis sion and to potential investors any information provided by the issuer pursuant to subsection (b);
"(7) ensure that all offering proceeds are only provided to the issuer when the aggregate capital raised from all inves tors is equal to or greater than a target offering amount, and allow all investors to cancel their commitments to invest, as the Commission shall, by rule, determine appropriate;
"(8) make such efforts as the Commission determines appro priate, by rule, to ensure that no investor in a 12-month period has purchased securities offered pursuant to section 4(6) that, in the aggregate, from all issuers, exceed the investment limits set forth in section 4(6)(B);
"(9) take such steps to protect the privacy of information collected from investors as the Commission shall, by rule, deter mine appropriate;

"(10) not compensate promoters, finders, or lead generators for providing the broker or funding portal with the personal identifying information of any potential investor;

"(11) prohibit its directors, officers, or partners (or any person occupying a similar status or performing a similar

func tion) from having any financial interest in an issuer using its services; and

"(12) meet such other requirements as the Commission may, by rule, prescribe, for the protection of investors and in the public interest.

"(b) REQUIREMENTS FOR ISSUERS.—For purposes of section 4(6),

an issuer who offers or sells securities shall—

"(1) file with the Commission and provide to investors and the relevant broker or funding portal, and make available to potential investors—

"(A) the name, legal status, physical address, and website address of the issuer;

"(B) the names of the directors and officers (and any persons occupying a similar status or performing a similar function), and each person holding more than 20 percent of the shares of the issuer;

"(C) a description of the business of the issuer and the anticipated business plan of the issuer;

"(D) a description of the financial condition of the issuer, including, for offerings that, together with all other offerings of the issuer under section 4(6) within the preceding 12-month period, have, in the aggregate, target offering amounts of—

"(i) $100,000 or less—

"(I) the income tax returns filed by the issuer for the most recently completed year (if any); and

"(II) financial statements of the issuer, which shall be certified by the principal executive officer of the issuer to be true and complete in all material respects;

"(ii) more than $100,000, but not more than $500,000, financial statements reviewed by a public accountant who is independent of the issuer, using professional standards and procedures for such review or standards and procedures established by the Commission, by rule, for such purpose; and

"(iii) more than $500,000 (or such other amount as the Commission may establish, by rule), audited financial statements;

"(E) a description of the stated purpose and intended use of the proceeds of the offering sought by the issuer with respect to the target offering amount;

"(F) the target offering amount, the deadline to reach the target offering amount, and regular updates regarding the progress of the issuer in meeting the target offering amount;

"(G) the price to the public of the securities or the method for determining the price, provided that, prior to sale, each investor shall be provided in writing the final price and all required disclosures, with a reasonable oppor tunity to rescind the commitment to purchase the securi ties;

Time period.

"(H) a description of the ownership and capital structure of the issuer, including—

"(i) terms of the securities of the issuer being offered and each other class of security of the issuer, including how such terms may be modified, and a summary of the differences between such securities, including how the rights of the securities being offered may be materially limited, diluted, or qualified by the rights of any other class of security of the issuer;

"(ii) a description of how the exercise of the rights held by the principal shareholders of the issuer could negatively impact the purchasers of the securities being offered;

"(iii) the name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer;

"(iv) how the securities being offered are being valued, and examples of methods for how such securities may be valued by the issuer in the future, including during subsequent corporate actions; and

"(v) the risks to purchasers of the securities relating to minority ownership in the issuer, the risks associated with corporate actions, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties; and

"(I) such other information as the Commission may, by rule, prescribe, for the protection of investors and in

the public interest;

"(2) not advertise the terms of the offering, except for notices which direct investors to the funding portal or broker;

"(3) not compensate or commit to compensate, directly or indirectly, any person to promote its offerings through communication channels provided by a broker or funding portal, with out taking such steps as the Commission shall, by rule, require to ensure that such person clearly discloses the receipt, past or prospective, of such compensation, upon each instance of such promotional communication;

Deadline.
Reports.

"(4) not less than annually, file with the Commission and provide to investors reports of the results of operations and financial statements of the issuer, as the Commission shall, by rule, determine appropriate, subject to such exceptions and termination dates as the Commission may establish, by rule; and "(5) comply with such other requirements as the Commis sion may, by rule, prescribe, for the protection of investors and in the public interest.

"(c) LIABILITY FOR MATERIAL MISSTATEMENTS AND OMISSIONS.— "(1) ACTIONS AUTHORIZED.— "(A) IN GENERAL.—Subject to paragraph (2), a person who purchases a security in a transaction exempted by the provisions of section 4(6) may bring an action against an issuer described in paragraph (2), either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if such person no longer owns the security.

"(B) LIABILITY.—An action brought under this paragraph shall be subject to the provisions of section 12(b) and section 13, as if the liability were created under section 12(a)(2).

"(2) APPLICABILITY.—An issuer shall be liable in an action under paragraph (1), if the issuer—

"(A) by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by any means of any written or oral communication, in the offering or sale of a security in a transaction exempted by the provisions of section 4(6), makes an untrue statement of a material fact or omits to state a material fact required to be stated or necessary in order to make the statements, in the light of the cir cumstances under which they were made, not misleading, provided that the purchaser did not know of such untruth or omission; and

"(B) does not sustain the burden of proof that such issuer did not know, and in the exercise of reasonable

care could not have known, of such untruth or omission.

"(3) DEFINITION.—As used in this subsection, the term 'issuer' includes any person who is a director or partner of the issuer, and the principal executive officer or officers, prin cipal financial officer, and controller or principal accounting officer of the issuer (and any person occupying a similar status or performing a similar function) that offers or sells a security in a transaction exempted by the provisions of section 4(6), and any person who offers or sells the security in such offering. "(d) INFORMATION AVAILABLE TO STATES.—The Commission shall make, or shall cause to be made by the relevant broker or funding portal, the information described in subsection (b) and such other information as the Commission, by rule, determines appropriate, available to the securities commission (or any agency or office performing like functions) of each State and territory of the United States and the District of Columbia.

"(e) RESTRICTIONS ON SALES.—Securities issued pursuant to a transaction described in section 4(6)—

"(1) may not be transferred by the purchaser of such securi ties during the 1-year period beginning on the date of purchase, unless such securities are transferred—

"(A) to the issuer of the securities;

"(B) to an accredited investor;

"(C) as part of an offering registered with the Commis sion; or

"(D) to a member of the family of the purchaser or the equivalent, or in connection with the death or divorce of the purchaser or other similar circumstance, in the discretion of the Commission; and

"(2) shall be subject to such other limitations as the Commission shall, by rule, establish.

"(f) APPLICABILITY.—Section 4(6) shall not apply to transactions involving the offer or sale of securities by any issuer that—

"(1) is not organized under and subject to the laws of a State or territory of the United States or the District of Columbia;

Time period.

"(2) is subject to the requirement to file reports pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934;

"(3) is an investment company, as defined in section 3 of the Investment Company Act of 1940, or is excluded from the definition of investment company by section 3(b) or section 3(c) of that Act; or

"(4) the Commission, by rule or regulation, determines

appropriate.

"(g) RULE OF CONSTRUCTION.—Nothing in this section or section 4(6) shall be construed as preventing an issuer from raising capital through methods not described under section 4(6).

Time period.
Notice.
Federal Register, publication.

Deadline.
15 USC 77d note.

Consultation.

15 USC 77d note.
Deadline.

"(h) CERTAIN CALCULATIONS.— "(1) DOLLAR AMOUNTS.—Dollar amounts in section 4(6) and subsection (b) of this section shall be adjusted by the Commis sion not less frequently than once every 5 years, by notice published in the Federal Register to reflect any change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics.

"(2) INCOME AND NET WORTH.—The income and net worth of a natural person under section 4(6)(B) shall be calculated in accordance with any rules of the Commission under this title regarding the calculation of the income and net worth, respectively, of an accredited investor.".

(c) RULEMAKING.—Not later than 270 days after the date of enactment of this Act, the Securities and Exchange Commission (in this title referred to as the "Commission") shall issue such rules as the Commission determines may be necessary or appro priate for the protection of investors to carry out sections 4(6) and section 4A of the Securities Act of 1933, as added by this title. In carrying out this section, the Commission shall consult with any securities commission (or any agency or office performing like functions) of the States, any territory of the United States, and the District of Columbia, which seeks to consult with the Commission, and with any applicable national securities association. (d) DISQUALIFICATION.—

(1) IN GENERAL.—Not later than 270 days after the date of enactment of this Act, the Commission shall, by rule, estab lish disqualification provisions under which— (A) an issuer shall not be eligible to offer securities pursuant to section 4(6) of the Securities Act of 1933, as added by this title; and (B) a broker or funding portal shall not be eligible to effect or participate in transactions pursuant to that section 4(6).

(2) INCLUSIONS.—Disqualification provisions required by this subsection shall—

(A) be substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations (or any successor thereto); and

(B) disqualify any offering or sale of securities by a person that—

(i) is subject to a final order of a State securities commission (or an agency or officer of a State per forming like functions), a State authority that

supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that—

(I) bars the person from—

(aa) association with an entity regulated by such commission, authority, agency, or officer;

(bb) engaging in the business of securities, insurance, or banking; or

(cc) engaging in savings association or credit union activities; or

(II) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offer or sale; or

(ii) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission.

SEC. 303. EXCLUSION OF CROWDFUNDING INVESTORS FROM SHAREHOLDER CAP.

(a) EXEMPTION.—Section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)) is amended by adding at the end the following:

"(6) EXCLUSION FOR PERSONS HOLDING CERTAIN SECURITIES.—The Commission shall, by rule, exempt, conditionally or unconditionally, securities acquired pursuant to an offering made under section 4(6) of the Securities Act of 1933 from the provisions of this subsection.".

(b) RULEMAKING.—The Commission shall issue a rule to carry out section 12(g)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78c), as added by this section, not later than 270 days after the date of enactment of this Act.

SEC. 304. FUNDING PORTAL REGULATION.

(a) EXEMPTION.— (1) IN GENERAL.—Section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) is amended by adding at the end the following:

"(h) LIMITED EXEMPTION FOR FUNDING PORTALS.— "(1) IN GENERAL.—The Commission shall, by rule, exempt, conditionally or unconditionally, a registered funding portal from the requirement to register as a broker or dealer under section 15(a)(1), provided that such funding portal—

"(A) remains subject to the examination, enforcement, and other rulemaking authority of the Commission;

"(B) is a member of a national securities association registered under section 15A; and

"(C) is subject to such other requirements under this title as the Commission determines appropriate under such rule.

"(2) NATIONAL SECURITIES ASSOCIATION MEMBERSHIP.—For purposes of sections 15(b)(8) and 15A, the term 'broker or dealer' includes a funding portal and the term 'registered broker or dealer' includes a registered funding portal, except to the extent that the Commission, by rule, determines otherwise,

Regulations.

15 USC 78*l* note. Definition.

provided that a national securities association shall only examine for and enforce against a registered funding portal rules of such national securities association written specifically for registered funding portals.".

Deadline.
15 USC 78c note.

15 USC 77r note.

(2) RULEMAKING.—The Commission shall issue a rule to carry out section 3(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78c), as added by this subsection, not later than 270 days after the date of enactment of this Act.
(b) DEFINITION.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following: "(80) FUNDING PORTAL.—The term 'funding portal' means any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to section 4(6) of the Securities Act of 1933 (15 U.S.C. 77d(6)), that does not—
"(A) offer investment advice or recommendations;
"(B) solicit purchases, sales, or offers to buy the securities offered or displayed on its website or portal; "(C) compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its website or portal;
"(D) hold, manage, possess, or otherwise handle investor funds or securities; or
"(E) engage in such other activities as the Commission, by rule, determines appropriate.".

SEC. 305. RELATIONSHIP WITH STATE LAW.

(a) IN GENERAL.—Section 18(b)(4) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)) is amended—
(1) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively; and
(2) by inserting after subparagraph (B) the following: "(C) section 4(6);".
(b) CLARIFICATION OF THE PRESERVATION OF STATE ENFORCEMENT AUTHORITY.—
(1) IN GENERAL.—The amendments made by subsection (a) relate solely to State registration, documentation, and offering requirements, as described under section 18(a) of Securities Act of 1933 (15 U.S.C. 77r(a)), and shall have no impact or limitation on other State authority to take enforcement action with regard to an issuer, funding portal, or any other person or entity using the exemption from registration provided by section 4(6) of that Act.
(2) CLARIFICATION OF STATE JURISDICTION OVER UNLAWFUL CONDUCT OF FUNDING PORTALS AND ISSUERS.—Section 18(c)(1) of the Securities Act of 1933 (15 U.S.C. 77r(c)(1)) is amended by striking "with respect to fraud or deceit, or unlawful conduct by a broker or dealer, in connection with securities or securities transactions." and inserting the following: ", in connection with securities or securities transactions
"(A) with respect to—
"(i) fraud or deceit; or
"(ii) unlawful conduct by a broker or dealer; and "(B) in connection to a transaction described under section 4(6), with respect to—
"(i) fraud or deceit; or

"(ii) unlawful conduct by a broker, dealer, funding portal, or issuer.".

(c) NOTICE FILINGS PERMITTED.—Section 18(c)(2) of the Securities Act of 1933 (15 U.S.C. 77r(c)(2)) is amended by adding at the end the following:

"(F) FEES NOT PERMITTED ON CROWDFUNDED SECURITIES.—Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(4)(B), or will be such a covered security upon completion of the transaction, except for the securities commission (or any agency or office performing like functions) of the State of the principal place of business of the issuer, or any State in which purchasers of 50 percent or greater of the aggregate amount of the issue are residents, provided that for purposes of this subparagraph, the term 'State' includes the District of Columbia and the territories of the United States.".

(d) FUNDING PORTALS.— (1) STATE EXEMPTIONS AND OVERSIGHT.—Section 15(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(i)) is amended—
(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and
(B) by inserting after paragraph (1) the following:

"(2) FUNDING PORTALS.— "(A) LIMITATION ON STATE LAWS.—Except as provided in subparagraph (B), no State or political subdivision thereof may enforce any law, rule, regulation, or other administrative action against a registered funding portal with respect to its business as such.
"(B) EXAMINATION AND ENFORCEMENT AUTHORITY.— Subparagraph (A) does not apply with respect to the exam ination and enforcement of any law, rule, regulation, or administrative action of a State or political subdivision thereof in which the principal place of business of a reg istered funding portal is located, provided that such law, rule, regulation, or administrative action is not in addition to or different from the requirements for registered funding portals established by the Commission.
"(C) DEFINITION.—For purposes of this paragraph, the term 'State' includes the District of Columbia and the terri tories of the United States.".

(2) STATE FRAUD AUTHORITY.—Section 18(c)(1) of the Securi ties Act of 1933 (15 U.S.C. 77r(c)(1)) is amended by striking "or dealer" and inserting ", dealer, or funding portal".

TITLE IV—SMALL COMPANY CAPITAL FORMATION

SEC. 401. AUTHORITY TO EXEMPT CERTAIN SECURITIES.

(a) IN GENERAL.—Section 3(b) of the Securities Act of 1933 (15 U.S.C. 77c(b)) is amended—

(1) by striking "(b) The Commission" and inserting the following:
"(b) ADDITIONAL EXEMPTIONS.—
Definition.

"(1) SMALL ISSUES EXEMPTIVE AUTHORITY.—The Commis
sion"; and (2) by adding at the end the following:

Regulations.

Time period.

Applicability.

Records.

"(2) ADDITIONAL ISSUES.—The Commission shall by rule or regulation add a class of securities to the securities exempted pursuant to this section in accordance with the following terms and conditions:
"(A) The aggregate offering amount of all securities offered and sold within the prior 12-month period in reli ance on the exemption added in accordance with this para graph shall not exceed $50,000,000. "(B) The securities may be offered and sold publicly. "(C) The securities shall not be restricted securities within the meaning of the Federal securities laws and the regulations promulgated thereunder.
"(D) The civil liability provision in section 12(a)(2) shall apply to any person offering or selling such securities. "(E) The issuer may solicit interest in the offering prior to filing any offering statement, on such terms and conditions as the Commission may prescribe in the public interest or for the protection of investors.
"(F) The Commission shall require the issuer to file audited financial statements with the Commission annually.
"(G) Such other terms, conditions, or requirements as the Commission may determine necessary in the public interest and for the protection of investors, which may include— "(i) a requirement that the issuer prepare and
electronically file with the Commission and distribute to prospective investors an offering statement, and any related documents, in such form and with such content as prescribed by the Commission, including audited financial statements, a description of the issuer's busi ness operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters; and
"(ii) disqualification provisions under which the exemption shall not be available to the issuer or its predecessors, affiliates, officers, directors, under writers, or other related persons, which shall be substantially similar to the disqualification provisions contained in the regulations adopted in accordance with section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 77d note).
"(3) LIMITATION.—Only the following types of securities may be exempted under a rule or regulation adopted pursuant to paragraph (2): equity securities, debt securities, and debt securities convertible or exchangeable to equity interests, including any guarantees of such securities.
"(4) PERIODIC DISCLOSURES.—Upon such terms and condi tions as the Commission determines necessary in the public interest and for the protection of investors, the Commission by rule or

regulation may require an issuer of a class of securi ties exempted under paragraph (2) to make available to inves tors and file with the Commission periodic disclosures regarding the issuer, its business operations, its financial condition, its

corporate governance principles, its use of investor funds, and other appropriate matters, and also may provide for the suspen sion and termination of such a requirement with respect to that issuer.

"(5) ADJUSTMENT.—Not later than 2 years after the date of enactment of the Small Company Capital Formation Act of 2011 and every 2 years thereafter, the Commission shall review the offering amount limitation described in paragraph (2)(A) and shall increase such amount as the Commission deter mines appropriate. If the Commission determines not to increase such amount, it shall report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on its reasons for not increasing the amount.".

(b) TREATMENT AS COVERED SECURITIES FOR PURPOSES OF NSMIA.—Section 18(b)(4) of the Securities Act of 1933 (as amended by section 303) (15 U.S.C. 77r(b)(4)) is further amended by inserting after subparagraph (C) (as added by such section) the following: "(D) a rule or regulation adopted pursuant to section 3(b)(2) and such security is—

"(i) offered or sold on a national securities exchange; or

"(ii) offered or sold to a qualified purchaser, as defined by the Commission pursuant to paragraph (3) with respect to that purchase or sale;".

(c) CONFORMING AMENDMENT.—Section 4(5) of the Securities Act of 1933 is amended by striking "section 3(b)" and inserting "section 3(b)(1)".

SEC. 402. STUDY ON THE IMPACT OF STATE BLUE SKY LAWS ON REGU LATION A OFFERINGS.

The Comptroller General shall conduct a study on the impact of State laws regulating securities offerings, or "Blue Sky laws", on offerings made under Regulation A (17 CFR 230.251 et seq.). The Comptroller General shall transmit a report on the findings of the study to the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate not later than 3 months after the date of enactment of this Act.

TITLE V—PRIVATE COMPANY FLEXIBILITY AND GROWTH

SEC. 501. THRESHOLD FOR REGISTRATION.

Section 12(g)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(1)(A)) is amended to read as follows:

"(A) within 120 days after the last day of its first fiscal year ended on which the issuer has total assets exceeding $10,000,000 and a class of equity security (other than an exempted security) held of record by either—

"(i) 2,000 persons, or

"(ii) 500 persons who are not accredited investors (as such term is defined by the Commission), and".

Deadlines. Review.

Reports.
Deadline. Time period.

SEC. 502. EMPLOYEES.

Section 12(g)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(5)), as amended by section 302, is amended in subparagraph (A) by adding at the end the following: "For purposes of determining whether an issuer is required to register a security with the Commission pursuant to paragraph (1), the definition of 'held of record' shall not include securities held by persons who received the securities pursuant to an employee compensation plan in transactions exempted from the registration requirements of section 5 of the Securities Act of 1933.".

15 USC 78*l* note.

Deadline.
Recommendations.

Deadline.

SEC. 503. COMMISSION RULEMAKING.

The Securities and Exchange Commission shall revise the defi nition of "held of record" pursuant to section 12(g)(5) of the Securi ties Exchange Act of 1934 (15 U.S.C. 78l(g)(5)) to implement the amendment made by section 502. The Commission shall also adopt safe harbor provisions that issuers can follow when determining whether holders of their securities received the securities pursuant to an employee compensation plan in transactions that were exempt from the registration requirements of section 5 of the Securities Act of 1933.

SEC. 504. COMMISSION STUDY OF ENFORCEMENT AUTHORITY UNDER RULE 12G5–1.

The Securities and Exchange Commission shall examine its authority to enforce Rule 12g5–1 to determine if new enforcement tools are needed to enforce the anti-evasion provision contained in subsection (b)(3) of the rule, and shall, not later than 120 days after the date of enactment of this Act transmit its recommendations to Congress.

TITLE VI—CAPITAL EXPANSION

SEC. 601. SHAREHOLDER THRESHOLD FOR REGISTRATION.

(a) AMENDMENTS TO SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)) is further amended—

(1) in paragraph (1), by amending subparagraph (B) to read as follows:

"(B) in the case of an issuer that is a bank or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), not later than 120 days after the last day of its first fiscal year ended after the effective date of this subsection, on which the issuer has total assets exceeding $10,000,000 and a class of equity security (other than an exempted security) held of record by 2,000 or more persons,"; and

(2) in paragraph (4), by striking "three hundred" and inserting "300 persons, or, in the case of a bank or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 1,200 persons".

(b) AMENDMENTS TO SECTION 15 OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)) is amended, in the third sentence, by striking "three hundred" and inserting "300 persons, or, in the case of bank or a bank holding company, as such term is defined

in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 1,200 persons".

SEC. 602. RULEMAKING.

Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall issue final regulations to implement this title and the amendments made by this title.

TITLE VII—OUTREACH ON CHANGES TO THE LAW

SEC. 701. OUTREACH BY THE COMMISSION.

The Securities and Exchange Commission shall provide online information and conduct outreach to inform small and medium sized businesses, women owned businesses, veteran owned businesses, and minority owned businesses of the changes made by this Act.

Approved April 5, 2012.

LEGISLATIVE HISTORY—H.R. 3606:
HOUSE REPORTS: No. 112–406 and Pt. 2 (Comm. on Financial Services).
CONGRESSIONAL RECORD, Vol. 158 (2012):
Mar. 7, 8, considered and passed House.
Mar. 15, 19–22, considered and passed Senate, amended.
Mar. 27, House concurred in Senate amendment.
DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2012):

Apr. 5, Presidential remarks.

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Deadline.
15 USC 78*l* note.

Web posting.
Small business. Women.
Veterans.
Minorities.
15 USC 78d note.

§77c. Classes of securities under this subchapter

(a) Exempted securities

Except as hereinafter expressly provided, the provisions of this subchapter shall not apply to any of the following classes of securities:
(1) Reserved.

(2) Any security issued or guaranteed by the United States or any territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or territory, or by any public instrumentality of one or more States or territories, or by any person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing; or any security issued or guaranteed by any bank; or any security issued by or representing an interest in or a direct obligation of a Federal Reserve bank; or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term "investment company" under section 3(c)(3) of the
interest, participation, or security is issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of title 26, (B) an annuity plan which meets the requirements for the deduction of the

TAB 2

REGULATORY BACKBONE

The Commission rules being challenged, in their current published form as of May 27, 2026. The Commission's exemptive authority under 15 U.S.C. §§ 77z-3 and 78mm supplies the legal mechanism for the three Amendments requested in the concurrent Petition.

Documents in this tab:

• 2.1 — 17 C.F.R. Part 230 (Regulation A framework, §§ 230.251–263, eCFR current as of 5/27/2026) • 2.2 — 17 C.F.R. § 239.90 (Form 1-A, offering statement under Regulation A — eCFR)

Title 17 —Commodity and Securities Exchanges
Chapter II —Securities and Exchange Commission

Part 230 General Rules and Regulations, Securities Act of 1933

General

 17 CFR Part 230 (May 27, 2026) (enhanced display) page 1 of 309

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78o-7 note, 78t, 78w, 78*ll*(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, and Pub. L. 112-106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

Section 230.151 is also issued under 15 U.S.C. 77s(a).

Section 230.160 is also issued under Section 104(d) of the Electronic Signatures Act.

Section 230.193 is also issued under sec. 943, Pub. L. 111-203, 124 Stat. 1376.

Sections 230.400 to 230.499 issued under secs. 6, 8, 10, 19, 48 Stat. 78, 79, 81, and 85, as amended (15 U.S.C. 77f, 77h, 77j, 77s).

Sec. 230.457 also issued under secs. 6 and 7, 15 U.S.C. 77f and 77g.

Section 230.502 is also issued under 15 U.S.C. 80a-8, 80a-29, 80a-30.

ATTENTION ELECTRONIC FILERS

THIS REGULATION SHOULD BE READ IN CONJUNCTION WITH REGULATION S-T (PART 232 OF THIS CHAPTER), WHICH GOVERNS THE PREPARATION AND SUBMISSION OF DOCUMENTS IN ELECTRONIC FORMAT. MANY PROVISIONS RELATING TO THE PREPARATION AND SUBMISSION OF DOCUMENTS IN PAPER FORMAT CONTAINED IN THIS REGULATION ARE SUPERSEDED BY THE PROVISIONS OF REGULATION S-T FOR DOCUMENTS REQUIRED TO BE FILED IN ELECTRONIC FORMAT

General

Note: In §§ 230.100 to 230.174, the numbers to the right of the decimal point correspond with the respective rule numbers in general rules and regulations adopted by the Securities and Exchange Commission under the Securities Act of 1933.

Cross Reference:

For regulations governing registration, see §§ 230.400-230.494.

§ 230.100 Definitions of terms used in the rules and regulations.

(a) As used in the rules and regulations prescribed in this part by the Securities and Exchange Commission pursuant to the Securities Act of 1933, unless the context otherwise requires:

(1) The term *Commission* means the Securities and Exchange Commission.

(2) The term *Act* means the Securities Act of 1933.

(3) The term *rules and regulations* refers to all rules and regulations adopted by the Commission pursuant to the Act, including the forms and accompanying instructions thereto.

(4) The term *registrant* means the issuer of securities for which a registration statement is filed.

(5) The term *agent for service* means the person authorized in the registration statement to receive notices and communications from the Commission.

(6) The term *electronic filer* means a person or an entity that submits filings electronically pursuant to Rules 101, 901, 902 or 903 of Regulation S-T (§§ 232.101, 232.901, 232.902 or 232.903 of this chapter, respectively).

(7) The term *electronic filing* means a document under the federal securities laws that is transmitted or delivered to the Commission in electronic format.

(b) Unless otherwise specifically provided, the terms used in this part shall have the meanings defined in the act.

(c) A rule in the general rules and regulations which defines a term without express reference to the Act or to the rules and regulations or to a portion thereof defines such term for all purposes as used both in the Act and in the rules and regulations, unless the context otherwise requires.

[2 FR 1076, May 26, 1937, as amended at 21 FR 7566, Oct. 3, 1956; 58 FR 14669, Mar. 18, 1993]

§ 230.110 Business hours of the Commission.

(a) *General.* The principal office of the Commission, at 100 F Street, NE., Washington, DC 20549, is open each day, except Saturdays, Sundays, and Federal holidays, from 9 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, *provided that* hours for the filing of documents pursuant to the Act or the rules and regulations thereunder are as set forth in paragraphs (b), (c) and (d) of this section.

(b) *Submissions made in paper.* Paper documents filed with or otherwise furnished to the Commission may be submitted each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

(c) *Filings by direct transmission.* Filings made by direct transmission may be submitted to the Commission each day, except Saturdays, Sundays, and Federal holidays, from 6 a.m. to 10 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

(d) *Filings by facsimile.* Registration statements and post-effective amendments thereto filed by facsimile transmission pursuant to Rule 462(b) (§ 230.462(b)) and Rule 455 (§ 230.455) may be filed with the Commission each day, except Saturdays, Sundays and federal holidays, from 5:30 p.m. to 10 p.m., Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect.

[58 FR 14669, Mar. 18, 1993, as amended at 60 FR 26615, May 17, 1995; 65 FR 24799, Apr. 27, 2000; 68 FR 25798, May 13, 2003; 73 FR 967, Jan. 4, 2008; 88 FR 12209, Feb. 27, 2023]

§ 230.111 Payment of filing fees.

All payments of filing fees for registration statements under the Act shall be made by wire transfer, debit card, or credit card or via the Automated Clearing House Network. There will be no refunds. Payment of filing fees required by this section shall be made in accordance with the directions set forth in § 202.3a of this chapter.

[86 FR 70199, Dec. 9, 2021]

§ 230.120 Inspection of registration statements.

Except for material contracts or portions thereof accorded confidential treatment pursuant to § 230.406, all registration statements are available for public inspection, during business hours, at the principal office of the Commission in Washington, D.C. Electronic registration statements made through the Electronic Data Gathering, Analysis, and Retrieval system are publicly available through the Commission's Web site (*http://www.sec.gov*).

[61 FR 24654, May 15, 1996]

§ 230.122 Non-disclosure of information obtained in the course of examinations and investigations.

Information or documents obtained by officers or employees of the Commission in the course of any examination or investigation pursuant to section 8(e) or 20(a) (48 Stat. 80, 86; 15 U.S.C. 77h(e), 77t(a)) shall, unless made a matter of public record, be deemed confidential. Except as provided by 17 CFR 203.2, officers and employees are hereby prohibited from making such confidential information or documents or any other non-public records of the Commission available to anyone other than a member, officer or employee of the Commission, unless the Commission or the General Counsel, pursuant to delegated authority, authorizes the disclosure of such information or the production of such documents as not being contrary to the public interest. Any officer or employee who is served with a subpoena requiring the disclosure of such information or the production of such documents shall appear in court and, unless the authorization described in the preceding sentence shall have been given, shall respectfully decline to disclose the information or produce the documents called for, basing his or her refusal upon this section. Any officer or employee who is served with such a subpoena shall promptly advise the General Counsel of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear on the desirability of making available such information or documents.

[44 FR 50836, Aug. 30, 1979, as amended at 53 FR 17459, May 17, 1988; 54 FR 33501, Aug. 15, 1989; 76 FR 71876, Nov. 21, 2011]

§ 230.130 Definition of "rules and regulations" as used in certain sections of the Act.

The term *rules and regulations* as used in sections 7, 10 (a), (c) and (d) and 19(a) of the Act, shall include the forms for registration of securities under the Act and the related instructions thereto.

[21 FR 1046, Feb. 15, 1956]

§ 230.131 Definition of security issued under governmental obligations.

(a) Any part of an obligation evidenced by any bond, note, debenture, or other evidence of indebtedness issued by any governmental unit specified in section 3(a)(2) of the Act which is payable from payments to be made in respect of property or money which is or will be used, under a lease, sale, or loan arrangement, by or for industrial or commercial enterprise, shall be deemed to be a separate *security* within the meaning of section 2(l) of the Act, issued by the lessee or obligor under the lease, sale or loan arrangement.

(b) An obligation shall not be deemed a separate *security* as defined in paragraph (a) of this section if,

(1) the obligation is payable from the general revenues of a governmental unit, specified in section 3(a)(2) of the Act, having other resources which may be used for payment of the obligation, or

(2) the obligation relates to a public project or facility owned and operated by or on behalf of and under the control of a governmental unit specified in such section, or

(3) the obligation relates to a facility which is leased to and under the control of an industrial or commercial enterprise but is a part of a public project which, as a whole, is owned by and under the general control of a governmental unit specified in such section, or an instrumentality thereof.

(c) This rule shall apply to transactions of the character described in paragraph (a) of this section only with respect to bonds, notes, debentures or other evidences of indebtedness sold after December 31, 1968.

(15 U.S.C. 77w)

33 FR 12648, Sept. 6, 1968, as amended at 35 FR 6000, Apr. 11, 1970]

§ 230.132 Definition of "common trust fund" as used in section 3(a)(2) of the Act.

The term *common trust fund* as used in section 3(a)(2) of the Act (15 U.S.C. 77c(a)(2)) shall include a common trust fund which is maintained by a bank which is a member of an affiliated group, as defined in section 1504(a) of the Internal Revenue Code of 1954 (26 U.S.C. 1504(a)), and which is maintained exclusively for the collective investment and reinvestment of monies contributed thereto by one or more bank members of such affiliated group in the capacity of trustee, executor, administrator, or guardian, *Provided That:*

(a) The common trust fund is operated in compliance with the same state and federal regulatory requirements as would apply if the bank maintaining such fund and any other contributing banks were the same entry; and

(b) The rights of persons for whose benefit a contributing bank acts as trustee, executor, administrator, or guardian would not be diminished by reason of the maintenance of such common trust fund by another bank member of the affiliated group.

(15 U.S.C. 77s(a))

[43 FR 2392, Jan. 17, 1978]

§ 230.133 Definition for purposes of section 5 of the Act, of "sale", "offer", "offer to sell", and "offer for sale".

(a) For purposes only of section 5 of the Act, no *sale, offer to sell,* or *offer for sale* shall be deemed to be involved so far as the stockholders of a corporation are concerned where, pursuant to statutory provisions in the state of incorporation or provisions contained in the certificate of incorporation, there is submitted to the vote of such stockholders a plan or agreement for a statutory merger or consolidation or reclassification of securities, or a proposal for the transfer of assets of such corporation to another person in consideration of the issuance of securities of such other person or securities of a corporation which owns stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of such person, under such circumstances that the vote of a required favorable majority

(1) will operate to authorize the proposed transaction as far as concerns the corporation whose stockholders are voting (except for the taking of action by the directors of the corporation involved and for compliance with such statutory provisions as the filing of the plan or agreement with the appropriate State authority), and

(2) will bind all stockholders of such corporation except to the extent that dissenting shareholders may be entitled, under statutory provisions or provisions contained in the certificate of incorporation, to receive the appraised or fair value of their holdings.

(b) Any person who purchases securities of the issuer from security holders of a constituent corporation with a view to, or offers or sells such securities for such security holders in connection with, a distribution thereof pursuant to any contract or arrangement, made in connection with any transaction specified in paragraph (a) of this section, with the issuer or with any affiliate of the issuer, or with any person who in connection with such transaction is acting as an underwriter of such securities, shall be deemed to an underwriter of such securities within the meaning of section 2(11) of the Act. This paragraph does not refer to arrangements limited to provision for the matching and combination of fractional interests in

securities into whole interests, or the purchase and sale of such fractional interests, among security holders of the constituent corporation and to the sale on behalf of, and as agent for, such security holders of such number of fractional or whole interests as may be necessary to adjust for any remaining fractional interests after such matching.

(c) Any constituent corporation, or any person who is an affiliate of a constituent corporation at the time any transaction specified in paragraph (a) of this section, is submitted to a vote of the stockholders of such corporation, who acquires securities of the issuer in connection with such transaction with a view to the distribution thereof shall be deemed to be an underwriter of such securities within the meaning of section 2(11) of the Act. A transfer by a constituent corporation to its security holders of securities of the issuer upon a complete or partial liquidation shall not be deemed a distribution for the purpose of this paragraph.

(d) Notwithstanding the provisions of paragraph (c) of this section, a person specified therein shall not be deemed to be an underwriter nor to be engaged in a distribution with respect to securities acquired in any transaction specified in paragraph (a) of this section, which are sold by him in brokers' transactions within the meaning of section 4(4) of the Act, in accordance with the conditions and subject to the limitations specified in paragraph (e) of this section, if such person:

(1) Does not directly or indirectly solicit or arrange for the solicitation of orders to buy in anticipation of or in connection with such brokers' transactions;

(2) Makes no payment in connection with the execution of such brokers' transactions to any person other than the broker; and

(3) Limits such brokers' transactions to a sale or series of sales which, together with all other sales of securities of the same class by such person or on his behalf within the preceding six months, will not exceed the following:

(i) If the security is traded only otherwise than on a securities exchange, approximately one percent of the shares or units of such security outstanding at the time of receipt by the broker of the order to execute such transactions, or

(ii) If the security is admitted to trading on a securities exchange, the lesser of approximately (*a*) one percent of the shares or units of such security outstanding at the time of receipt by the broker of the order to execute such transactions or (*b*) the largest aggregate reported volume of trading on securities exchanges during any one week within the four calendar weeks preceding the receipt of such order.

(e) For the purposes of paragraph (d) of this section:

(1) The term *brokers' transactions* in section 4(4) of the Act shall be deemed to include transactions by a broker acting as agent for the account of the seller where:

(i) The broker performs no more than the usual and customary broker's functions,

(ii) The broker does no more than execute an order or orders to sell as a broker and receives no more than the usual or customary broker's commissions,

(iii) The broker does not solicit or arrange for the solicitation of orders to buy in anticipation of or in connection with such transactions and

(iv) The broker is not aware of any circumstances indicating that his principal is failing to comply with the provisions of paragraph (d) of this section;

(2) The term *solicitation of such orders* in section 4(4) of the Act shall be deemed to include the solicitation of an order to buy a security, but shall not be deemed to include the solicitation of an order to sell a security;

(3) Where within the previous 60 days a dealer has made a written bid for a security or a written solicitation of an offer to sell such security, the term *solicitation* in section 4(4) shall not be deemed to include an inquiry regarding the dealer's bid or solicitation.

(f) For the purposes of this rule, the term *constituent corporation* means any corporation, other than the issuer, which is a party to any transaction specified in paragraph (a) of this section. The term *affiliate* means a person controlling, controlled by or under common control with a specified person.

Note: This section is rescinded effective on and after January 1, 1973, except that it shall remain in effect: (1) For transactions submitted before that date for vote or consent of security holders; (2) for transactions formally submitted before such date for approval to any governmental regulatory agency, if such approval is required by law; and (3) for resales of securities received by persons in such transactions.

(Sec. 5, 48 Stat. 77; 15 U.S.C. 77e)

[19 FR 7129, Nov. 3, 1954, as amended at 24 FR 5900, July 23, 1959; 30 FR 2022, Feb. 13, 1965; 33 FR 566, Jan. 17, 1968. Rescinded at 37 FR 23636, Nov. 7, 1972]

§ 230.134 Communications not deemed a prospectus.

Except as provided in paragraphs (e) and (g) of this section, the terms “prospectus” as defined in section 2(a)(10) of the Act or “free writing prospectus” as defined in Rule 405 (§ 230.405) shall not include a communication limited to the statements required or permitted by this section, provided that the communication is published or transmitted to any person only after a registration statement relating to the offering that includes a prospectus satisfying the requirements of section 10 of the Act (except as otherwise permitted in paragraph (a) of this section) has been filed.

(a) Such communication may include any one or more of the following items of information, which need not follow the numerical sequence of this paragraph, provided that, except as to paragraphs (a)(4) through (6) of this section, the prospectus included in the filed registration statement does not have to include a price range otherwise required by rule:

(1) Factual information about the legal identity and business location of the issuer limited to the following: the name of the issuer of the security, the address, phone number, and e-mail address of the issuer's principal offices and contact for investors, the issuer's country of organization, and the geographic areas in which it conducts business;

(2) The title of the security or securities and the amount or amounts being offered, which title may include a designation as to whether the securities are convertible, exercisable, or exchangeable, and as to the ranking of the securities;

(3) A brief indication of the general type of business of the issuer, limited to the following: 17 CFR

(i) In the case of a manufacturing company, the general type of manufacturing, the principal products or classes of products manufactured, and the segments in which the company conducts business;

(ii) In the case of a public utility company, the general type of services rendered, a brief indication of the area served, and the segments in which the company conducts business;

(iii) In the case of an asset-backed issuer, the identity of key parties, such as sponsor, depositor, issuing entity, servicer or servicers, and trustee, the asset class of the transaction, and the identity of any credit enhancement or other support; and

(iv) In the case of any other type of company, a corresponding statement;

(4) The price of the security, or if the price is not known, the method of its determination or the *bona fide* estimate of the price range as specified by the issuer or the managing underwriter or underwriters;

(5) In the case of a fixed income security, the final maturity and interest rate provisions or, if the final maturity or interest rate provisions are not known, the probable final maturity or interest rate provisions, as specified by the issuer or the managing underwriter or underwriters;

(6) In the case of a fixed income security with a fixed (non-contingent) interest rate provision, the yield or, if the yield is not known, the probable yield range, as specified by the issuer or the managing underwriter or underwriters and the yield of fixed income securities with comparable maturity and security rating;

(7) A brief description of the intended use of proceeds of the offering, if then disclosed in the prospectus that is part of the filed registration statement;

(8) The name, address, phone number, and e-mail address of the sender of the communication and the fact that it is participating, or expects to participate, in the distribution of the security;

(9) The type of underwriting, if then included in the disclosure in the prospectus that is part of the filed registration statement;

(10) The names of underwriters participating in the offering of the securities, and their additional roles, if any, within the underwriting syndicate;

(11) The anticipated schedule for the offering (including the approximate date upon which the proposed sale to the public will begin) and a description of marketing events (including the dates, times, locations, and procedures for attending or otherwise accessing them);

(12) A description of the procedures by which the underwriters will conduct the offering and the procedures for transactions in connection with the offering with the issuer or an underwriter or participating dealer (including procedures regarding account-opening and submitting indications of interest and conditional offers to buy), and procedures regarding directed share plans and other participation in offerings by officers, directors, and employees of the issuer;

(13) Whether, in the opinion of counsel, the security is a legal investment for savings banks, fiduciaries, insurance companies, or similar investors under the laws of any State or Territory or the District of Columbia, and the permissibility or status of the investment under the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 *et seq.*];

(14) Whether, in the opinion of counsel, the security is exempt from specified taxes, or the extent to which the issuer has agreed to pay any tax with respect to the security or measured by the income therefrom;

(15) Whether the security is being offered through rights issued to security holders, and, if so, the class of securities the holders of which will be entitled to subscribe, the subscription ratio, the actual or proposed record date, the date upon which the rights were issued or are expected to be issued, the actual or anticipated date upon which they will expire, and the approximate subscription price, or any of the foregoing;

(16) Any statement or legend required by any state law or administrative authority;

(17) [Reserved]

(18) The names of selling security holders, if then disclosed in the prospectus that is part of the filed registration statement;

(19) The names of securities exchanges or other securities markets where any class of the issuer's securities are, or will be, listed;

(20) The ticker symbols, or proposed ticker symbols, of the issuer's securities;

(21) The CUSIP number as defined in Rule 17Ad-19(a)(5) of the Securities Exchange Act of 1934 (§ 240.17Ad-19(a)(5) of this chapter) assigned to the securities being offered; and

(22) Information disclosed in order to correct inaccuracies previously contained in a communication permissibly made pursuant to this section.

(b) Except as provided in paragraph (c) of this section, every communication used pursuant to this section shall contain the following:

(1) If the registration statement has not yet become effective, the following statement:

A registration statement relating to these securities has been filed with the Securities and Exchange Commission but has not yet become effective. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective; and

(2) The name and address of a person or persons from whom a written prospectus for the offering meeting the requirements of section 10 of the Act (other than a free writing prospectus as defined in Rule 405) including as to the identified paragraphs above a price range where required by rule, may be obtained.

(c) Any of the statements or information specified in paragraph (b) of this section may, but need not, be contained in a communication which:

(1) Does no more than state from whom and include the uniform resource locator (URL) where a written prospectus meeting the requirements of section 10 of the Act (other than a free writing prospectus as defined in Rule 405) may be obtained, identify the security, state the price thereof and state by whom orders will be executed; or

(2) Is accompanied or preceded by a prospectus or a summary prospectus, other than a free writing prospectus as defined in Rule 405, which meets the requirements of section 10 of the Act, including a price range where required by rule, at the date of such preliminary communication.

(d) A communication sent or delivered to any person pursuant to this section which is accompanied or preceded by a prospectus which meets the requirements of section 10 of the Act (other than a free writing prospectus as defined in Rule 405), including a price range where required by rule, at the date of such communication, may solicit from the recipient of the communication an offer to buy the security or request the recipient to indicate whether he or she might be interested in the security, if the communication 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.*), other than a registered closed-end investment company.

[70 FR 44800, Aug. 3, 2005, as amended at 76 FR 46617, Aug. 3, 2011; 85 FR 33352, June 1, 2020]

§ 230.134a Options material not deemed a prospectus.

Written materials, including advertisements, relating to standardized options, as that term is defined in Rule 9b-1 under the Securities Exchange Act of 1934, shall not be deemed to be a prospectus for the purposes of section 2(10) of the Securities Act of 1933; *Provided,* That such materials are limited to explanatory information describing the general nature of the standardized options markets or one or more strategies; *And, Provided further,* That:

(a) The potential risks related to options trading generally and to each strategy addressed are explained;

(b) No past or projected performance figures, including annualized rates of return are used; (c) No recommendation to purchase or sell any option contract is made;

(d) No specific security is identified, other than

(1) An option or other security exempt from registration under the Act, or

(2) An index option, including the component securities of the index; and

(e) If there is a definitive options disclosure document, as defined in Rule 9b-1 under the Securities Exchange Act of 1934, the materials shall contain the name and address of a person or persons from whom a copy of such document may be obtained.

(15 U.S.C. 77a *et seq.;* secs. 2, 7, 10, 19(a), 48 Stat. 74, 78, 81, 85; secs. 201, 205, 209, 210, 48 Stat. 905, 906, 908; secs. 1-4. 8, 68 Stat. 683, 685; sec. 12(a), 73 Stat. 143; sec. 7(a), 74 Stat. 412; sec. 27(a), 84 Stat. 1433; sec. 308(a)(2), 90 Stat. 57)

[47 FR 41955, Sept. 23, 1982, as amended at 49 FR 12688, Mar. 30, 1984]

§ 230.134b Statements of additional information.

For the purpose only of Section 5(b) of the Act (15 U.S.C. 77e(b)), the term "prospectus" as defined in Section 2(a)(10) of the Act (15 U.S.C. 77b(a)(10)) does not include a Statement of Additional Information filed as part of a registration statement on Form N-1A (§ 239.15A and § 274.11A of this chapter), Form N-2 (§ 239.14 and § 274.11a-1 of this chapter), Form N-3 (§§ 239.17a and 274.11b of this chapter), Form N-4 (§§ 239.17b and 274.11c of this chapter), or Form N-6 (§§ 239.17c and 274.11d of this chapter) transmitted prior to the effective date of the registration statement if it is accompanied or preceded by a preliminary prospectus meeting the requirements of § 230.430.

[67 FR 19868, Apr. 23, 2002]

§ 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 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 a § 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]

§ 230.135a Generic advertising.

(a) For the purposes only of section 5 of the Act, a notice, circular, advertisement, letter, sign, or other communication, published or transmitted to any person which does not specifically refer by name to the securities of a particular investment company, to the investment company itself, or to any other securities not exempt under section 3(a) of the Act, will not be deemed to offer any security for sale, provided:

(1) Such communication is limited to any one or more of the following:

(i) Explanatory information relating to securities of investment companies generally or to the nature of investment companies, or to services offered in connection with the ownership of such securities,

(ii) The mention or explanation of investment companies of different generic types or having various investment objectives, such as *balanced funds, growth funds, income funds, leveraged funds, specialty funds, variable annuities, bond funds,* and *no-load funds,*

(iii) Offers, descriptions, and explanation of various products and services not constituting a security subject to registration under the Act: *Provided,* That such offers, descriptions, and explanations do not relate directly to the desirability of owning or purchasing a security issued by a registered investment company,

(iv) Invitation to inquire for further information, and

(2) Such communication contains the name and address of a registered broker or dealer or other person sponsoring the communication.

(b) If such communication contains a solicitation of inquiries and prospectuses for investment company securities are to be sent or delivered in response to such inquiries, the number of such investment companies and, if applicable, the fact that the sponsor of the communication is the principal underwriter or investment adviser in respect to such investment companies shall be stated.

(c) With respect to any communication describing any type of security, service, or product, the broker, dealer, or other person sponsoring such communication must offer for sale a security, service, or product of the type described in such communication.

[37 FR 10073, May 19, 1972, as amended at 37 FR 10931, June 1, 1972]

§ 230.135b Materials not deemed an offer to sell or offer to buy nor a prospectus.

Materials meeting the requirements of § 240.9b-1 of this chapter shall not be deemed an offer to sell or offer to buy a security for purposes solely of Section 5 (15 U.S.C. 77e) of the Act, nor shall such materials be deemed a prospectus for purposes of Sections 2(a)(10) and 12(a)(2) (15 U.S.C. 77b(a)(10) and 77*l*(a)(2)) of the Act, even if such materials are referred to in, deemed to be incorporated by reference into, or otherwise in any manner deemed to be a part of a Form S-20 prospectus.

[67 FR 228, Jan. 2, 2002]

§ 230.135c Notice of certain proposed unregistered offerings.

(a) For the purposes only of section 5 of the Act, a notice given by an issuer required to file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 or a foreign issuer that is exempt from registration under the Securities Exchange Act of 1934 pursuant to § 240.12g3-2(b) of this chapter that it proposes to make, is making or has made an offering of securities not registered or required to be registered under the Act shall not be deemed to offer any securities for sale if:

(1) Such notice is not used for the purpose of conditioning the market in the United States for any of the securities offered;

(2) Such notice states that the securities offered will not be or have not been registered under the Act and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements; and

(3) Such notice contains no more than the following additional information:

(i) The name of the issuer;

(ii) The title, amount and basic terms of the securities offered, the amount of the offering, if any, made by selling security holders, the time of the offering and a brief statement of the manner and purpose of the offering without naming the underwriters;

(iii) In the case of a rights offering to security holders of the issuer, the class of securities the holders of which will be or were entitled to subscribe to the securities offered, the subscription ratio, the record date, the date upon which the rights are proposed to be or were issued, the term or expiration date of the rights and the subscription price, or any of the foregoing;

(iv) In the case of an offering of securities in exchange for other securities of the issuer or of another issuer, the name of the issuer and the title of the securities to be surrendered in exchange for the securities offered, the basis upon which the exchange may be made, or any of the foregoing;

(v) In the case of an offering to employees of the issuer or to employees of any affiliate of the issuer, the name of the employer and class or classes of employees to whom the securities are offered, the offering price or basis of the offering and the period during which the offering is to be or was made or any of the foregoing; and

(vi) Any statement or legend required by State or foreign law or administrative authority.

(b) Any notice contemplated by this section may take the form of a news release or a written communication directed to security holders or employees, as the case may be, or other published statements.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, in the case of a rights offering of a security listed or subject to unlisted trading privileges on a national securities exchange or quoted on the NASDAQ inter-dealer quotation system information with respect to the interest rate, conversion ratio and subscription price may be disseminated through the facilities of the exchange, the consolidated transaction reporting system, the NASDAQ system or the Dow Jones broad tape, provided such information is already disclosed in a Form 8-K (§ 249.308 of this chapter) on file with the Commission, in a Form 6-K (§ 249.306 of this chapter) furnished to the Commission or, in the case of an issuer relying on § 240.12g3-2(b) of this chapter, in a submission made pursuant to that Section to the Commission.

(d) The issuer shall file any notice contemplated by this section with the Commission under cover of Form 8-K (§ 249.308 of this chapter) or furnish such notice under Form 6-K (§ 249.306 of this chapter), as applicable, and, if relying on § 240.12g3-2(b) of this chapter, shall furnish such notice to the Commission in accordance with the provisions of that exemptive Section.

[59 FR 21649, Apr. 26, 1994]

§ 230.135d Communications involving security -based swaps.

(a) For the purposes only of Section 5 of the Act (15 U.S.C. 77e), the publication or distribution of quotes relating to security-based swaps that may be purchased only by persons who are eligible contract participants (as defined in Section 1a(18) of the Commodity Exchange Act (7 U.S.C. 1a(18))) and are traded or processed on or through a trading system or platform that either is registered as a national securities exchange under Section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)) or as a security-based swap execution facility under Section 3D(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c-4(a)), or is exempt from registration as a security-based swap execution facility under Section

3D(a) of the Securities Exchange Act of 1934 pursuant to a rule, regulation, or order of the Commission shall not be deemed to constitute an offer, an offer to sell, or a solicitation of an offer to buy or purchase any security-based swap or any guarantee of such security-based swap that is a security; and

(b) For the purposes only of Section 5 of the Act (15 U.S.C. 77e), a broker, dealer, or security-based swap dealer's publication or distribution of a research report (as defined in § 230.139(d)) that discusses security-based swaps that may be purchased only by persons who are eligible contract participants (as defined in Section 1a(18) of the Commodity Exchange Act (7 U.S.C. 1a(18))) shall not be deemed to constitute an offer, an offer to sell, or a solicitation of an offer to buy or purchase any security-based swap or any guarantee of such security-based swap that is a security, provided that the broker, dealer, or security-based swap dealer publishes or distributes research reports on the issuer underlying the security based swap or its securities in the regular course of its business and the publication or distribution of the research report does not represent the initiation of publication of research reports about such issuer or its securities or the reinitiation of such publication following discontinuation of publication of such research reports. For purposes of this section, the term *issuer* as used in the definition of "research report" means the issuer of any security or loan referenced in the security-based swap, each issuer of a security in a narrow-based security index referenced in the security-based swap, or each issuer referenced in the security-based swap.

[83 FR 2056, Jan. 16, 2018]

§ 230.135e Offshore press conferences, meetings with issuer representatives conducted offshore, and press -related materials released offshore.

(a) For the purposes only of Section 5 of the Act (15 U.S.C. 77e), an issuer that is a foreign private issuer (as defined in § 230.405) or a foreign government issuer, a selling security holder of the securities of such issuers, or their representatives will not be deemed to offer any security for sale by virtue of providing any journalist with access to its press conferences held outside of the United States, to meetings with issuer or selling security holder representatives conducted outside of the United States, or to written press related materials released outside the United States, at or in which a present or proposed offering of securities is discussed, if:

(1) The present or proposed offering is not being, or to be, conducted solely in the United States;

Note to paragraph (a)(1): An offering will be considered not to be made solely in the United States under this paragraph (a)(1) only if there is an intent to make a bona fide offering offshore.

(2) Access is provided to both U.S. and foreign journalists; and

(3) Any written press-related materials pertaining to transactions in which any of the securities will be or are being offered in the United States satisfy the requirements of paragraph (b) of this section.

(b) Any written press-related materials specified in paragraph (a)(3) of this section must:

(1) State that the written press-related materials are not an offer of securities for sale in the United States, that securities may not be offered or sold in the United States absent registration or an exemption from registration, that any public offering of securities to be made in the United States

will be made by means of a prospectus that may be obtained from the issuer or the selling security holder and that will contain detailed information about the company and management, as well as financial statements;

(2) If the issuer or selling security holder intends to register any part of the present or proposed offering in the United States, include a statement regarding this intention; and

(3) Not include any purchase order, or coupon that could be returned indicating interest in the offering, as part of, or attached to, the written press-related materials.

(c) For the purposes of this section, *United States* means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

[62 FR 53954, Oct. 17, 1997]

§ 230.136 Definition of certain terms in relation to assessable stock.

(a) An *offer, offer to sell,* or *offer for sale* of securities shall be deemed to be made to the holders of assessable stock of a corporation when such corporation shall give notice of an assessment to the holders of such assessable stock. A *sale* shall be deemed to occur when a stockholder shall pay or agree to pay all or any part of such an assessment.

(b) The term *transactions by any person other than an issuer, underwriter or dealer* in section 4(1) of the Act shall not be deemed to include the offering or sale of assessable stock, at public auction or otherwise, upon the failure of the holder of such stock to pay an assessment levied thereon by the issuer, where the offer or sale is made for the purpose of realizing the amount of the assessment and any of the proceeds of such sale are to be received by the issuer. However, any person whose functions are limited to acting as auctioneer at such an auction sale shall not be deemed to be an underwriter of the securities offered or sold at the auction sale. Any person who acquires assessable stock at any such public auction or other sale with a view to the distribution thereof shall be deemed to be an underwriter of such assessable stock.

(c) The term *assessable stock* means stock which is subject to resale by the issuer pursuant to statute or otherwise in the event of a failure of the holder of such stock to pay any assessment levied thereon.

[24 FR 6386, Aug. 8, 1959]

§ 230.137 Publications or distributions of research reports by brokers or dealers that are not participating in an issuer's registered distribution of securities.

Under the following conditions, the terms “offers,” “participates,” or “participation” in section 2(a)(11) of the Act shall not be deemed to apply to the publication or distribution of research reports with respect to the securities of an issuer which is the subject of an offering pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective:

(a) The broker or dealer (and any affiliate) that has distributed the report and, if different, the person (and any affiliate) that has published the report have not participated, are not participating, and do not propose to participate in the distribution of the securities that are or will be the subject of the registered offering.

(b) In connection with the publication or distribution of the research report, the broker or dealer (and any affiliate) that has distributed the report and, if different, the person (and any affiliate) that has published the report are not receiving and have not received consideration directly or indirectly from, and are not acting under any direct or indirect arrangement or understanding with:

(1) The issuer of the securities;

(2) A selling security holder;

(3) Any participant in the distribution of the securities that are or will be the subject of the registration statement; or

(4) Any other person interested in the securities that are or will be the subject of the registration statement.

Instruction to § 230.137(b). This paragraph (b) does not preclude payment of:

1. The regular price being paid by the broker or dealer for independent research, so long as the conditions of this paragraph (b) are satisfied; or

2. The regular subscription or purchase price for the research report.

(c) The broker or dealer publishes or distributes the research report in the regular course of its business.

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

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

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

(3) 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).

(e) *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]

§ 230.138 Publications or distributions of research reports by brokers or dealers about securities other than those they are distributing.

(a) *Registered offerings.* Under the following conditions, a broker's or dealer's publication or distribution of research reports about securities of an issuer 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 which 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)

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

(iii) Note: If the issuer has filed a shelf registration statement under § 230.415(a)(1)(x) (Rule 415(a)(1)(x)) or pursuant to General Instruction I.D. of Form S-3, General Instruction I.C. of Form F-3 (§ 239.13 or § 239.33 of this chapter), or pursuant to General Instructions A.2 and B of Form N-2 (§§ 239.14 and 274.11a-1 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)

(A) 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

(B)

(1) Is a registered closed-end investment company; and

(2) 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 N-CSR (§§ 249.331 and 274.128 of this chapter), N-PORT (§ 274.150 of this chapter), and N-CEN (§§ 249.330 and 274.101 of this chapter) pursuant to Section 30 of the Investment Company Act; 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; 85 FR 33352, June 1, 2020]

§ 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 (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. For purposes of the Fair Access to Investment Research Act of 2017 [Pub. L. 115-66, 131 Stat. 1196 (2017)], a safe harbor has been established for covered investment fund research reports, and the specific terms of that safe harbor are set forth in § 230.139b.

(1) *Issuer-specific research reports.*

(i) The issuer either:

(A)

(*1*) 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:

(*1*) 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 either 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; 83 FR 64220, Dec. 13, 2018]

§ 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 Form SF-3 (§ 239.45 of this chapter) ("SF-3 ABS") shall not be deemed to constitute an offer for sale or offer to sell SF-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 SF-3 ABS backed directly (or, with respect to securitizations of other securities, indirectly) by substantially similar collateral as that directly or indirectly backing SF-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 expressed by the broker or dealer with respect to the asset-backed securities that are the subject of the information, opinion or recommendation.

(d) If the material published by the broker or dealer identifies asset-backed securities backed directly or indirectly by substantially similar collateral as that directly or indirectly backing the registered securities and specifically recommends that such asset-backed securities be preferred over other asset-backed securities backed by different types of collateral, then the material shall explain in reasonable detail the reasons for such preference.

[70 FR 1615, Jan. 7, 2005, as amended at 70 FR 44804, Aug. 3, 2005; 79 FR 57328, Sept. 24, 2014]

§ 230.139b Publications or distributions of covered investment fund research reports by brokers or dealers distributing securities.

(a) *Registered offerings.* Under the conditions of paragraph (a)(1) or (2) of this section, the publication or distribution of a covered investment fund research report by a broker or dealer that is not an investment adviser to the covered investment fund and is not an affiliated person of the investment adviser to the covered investment fund 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 of the covered investment fund that is effective, even if the broker or dealer is participating or may participate in the registered offering of the covered investment fund's securities. This section does not affect the availability of any other exemption or exclusion from sections 2(a)(10) or 5(c) of the Act available to the broker or dealer.

(1) *Issuer-specific research reports.*

(i) At the date of reliance on this section:

(A) The covered investment fund:

(*1*) Has been subject to the reporting requirements of section 30 of the Investment Company Act of 1940 (the "Investment Company Act") (15 U.S.C. 80a-29) for a period of at least 12 calendar months and has filed in a timely manner all of the reports required, as applicable, to be filed for the immediately preceding 12 calendar months on Forms N-CSR (§§ 249.331 and 274.128 of this chapter), N-PORT (§ 274.150 of this chapter), N-MFP (§ 274.201 of this chapter), and N-CEN (§§ 249.330 and 274.101 of this chapter) pursuant to section 30 of the Investment Company Act; or

(*2*) If the covered investment fund is not a registered investment company under the Investment Company Act, has been subject to the reporting requirements of section 13 or section 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78m or 78o(d)) for a period of at least 12 calendar months and has filed in a timely manner all of the reports required to be filed for the immediately preceding 12 calendar months on Forms 10-K (§ 249.310 of this chapter) and 10-Q (§ 249.308a of this chapter), or 20-F (§ 249.220f of this chapter) pursuant to section 13 or section 15(d) of the Exchange Act; and

(B) At the time of the broker's or dealer's initial publication or distribution of a research report on the covered investment fund (or reinitation thereof), and at least quarterly thereafter;

(*1*) If the covered investment fund is of the type defined in paragraph (c)(2)(i) of this section, the aggregate market value of voting and non-voting common equity held by affiliates and non-affiliates equals or exceeds the aggregate market value specified in General Instruction I.B.1 of Form S-3 (§ 239.13 of this chapter);

(*2*) If the covered investment fund is of the type defined in paragraph (c)(2)(ii) of this section, the aggregate market value of voting and non-voting common equity held by non-affiliates equals or exceeds the aggregate market value specified in General Instruction I.B.1 of Form S-3 (§ 239.13 of this chapter); or

(*3*) If the covered investment fund is a registered open-end investment company (other than an exchange-traded fund) its net asset value (inclusive of shares held by affiliates and non-affiliates) equals or exceeds the aggregate market value specified in General Instruction I.B.1 of Form S-3 (§ 239.13 of this chapter); and

(ii) The broker or dealer publishes or distributes research reports in the regular course of its business and, in the case of a research report regarding a covered investment fund that does not have a class of securities in substantially continuous distribution, such publication or distribution does not represent the initiation of publication of research reports about such covered investment fund or its securities or reinitiation of such publication following discontinuation of publication of such research reports.

(2) *Industry reports.*

(i) The covered investment fund is subject to the reporting requirements of section 30 of the Investment Company Act or, if the covered investment fund is not a registered investment company under the Investment Company Act, is subject to the reporting requirements of section 13 or section 15(d) of the Exchange Act;

(ii) The covered investment fund research report:

(A) Includes similar information with respect to a substantial number of covered investment fund issuers of the issuer's type (e.g., money market fund, bond fund, balanced fund, etc.), or investment focus (e.g., primarily invested in the same industry or sub-industry, or the same country or geographic region); or

(B) Contains a comprehensive list of covered investment fund securities currently recommended by the broker or dealer (other than securities of a covered investment fund that is an affiliate of the broker or dealer, or for which the broker or dealer serves as investment adviser (or for which the broker or dealer is an affiliated person of the investment adviser));

(iii) The analysis regarding the covered investment fund issuer or its securities is given no materially greater space or prominence in the publication than that given to other covered investment fund issuers or securities; and

(iv) 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 (in the case of a research report regarding a covered investment fund that does not have a class of securities in substantially continuous distribution), is including similar information about the issuer or its securities in similar reports.

(3) *Disclosure of standardized performance.* In the case of a research report about a covered investment fund that is a registered open-end management investment company or a trust account (or series or class thereof), any quotation of the issuer's performance must be presented in accordance with the conditions of paragraphs (d), (e), and (g) of § 230.482. In the case of a research report about a covered investment fund that is a registered closed-end investment company, any quotation of the issuer's performance must be presented in a manner that is in accordance with instructions to item 4.1(g) of Form N-2 (§§ 239.14 and 274.11a-1 of this chapter), provided, however, that other historical measures of performance may also be included if any other measurement is set out with no greater prominence than the measurement that is in accordance with the instructions to item 4.1(g) of Form N-2.

(b) *Self-regulatory organization rules.* A self-regulatory organization shall not maintain or enforce any rule that would prohibit the ability of a member to publish or distribute a covered investment fund research report solely because the member is also participating in a registered offering or other distribution of any securities of such covered investment fund; or to participate in a registered offering or other distribution of securities of a covered investment fund solely because the member has published or distributed a covered investment fund research report about such covered investment fund or its securities. For purposes of section 19(b) of the Exchange Act (15 U.S.C. 78s(b)), this paragraph (b) shall be deemed a rule under that Act.

(c) *Definitions.* For purposes of this section:

(1) *Affiliated person* has the meaning given the term in section 2(a) of the Investment Company Act.

(2) *Covered investment fund* means:

(i) An investment company (or a series or class thereof) registered under, or that has filed an election to be treated as a business development company under, the Investment Company Act and that has filed a registration statement under the Act for the public offering of a class of its securities, which registration statement has been declared effective by the Commission; or

(ii) A trust or other person:

(A) Issuing securities in an offering registered under the Act and which class of securities is listed for trading on a national securities exchange;

(B) The assets of which consist primarily of commodities, currencies, or derivative instruments that reference commodities or currencies, or interests in the foregoing; and

(C) That provides in its registration statement under the Act that a class of its securities are purchased or redeemed, subject to conditions or limitations, for a ratable share of its assets.

(3) *Covered investment fund research report* means a research report published or distributed by a broker or dealer about a covered investment fund or any securities issued by the covered investment fund, but does not include a research report to the extent that the research report is published or distributed by the covered investment fund or any affiliate of the covered investment fund, or any research report published or distributed by any broker or dealer that is an investment adviser (or any affiliated person of an investment adviser) for the covered investment fund.

(4) *Exchange-traded fund* has the meaning given the term in General Instruction A to Form N-1A (§§ 239.15A and 274.11A of this chapter).

(5) *Investment adviser* has the meaning given the term in section 2(a) of the Investment Company Act.

(6) *Research report* means a written communication, as defined in § 230.405 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.

[83 FR 64220, 64222, Dec. 13, 2018]

§ 230.140 Definition of "distribution" in section 2(11) for certain transactions.

A person, the chief part of whose business consists of the purchase of the securities of one issuer, or of two or more affiliated issuers, and the sale of its own securities, including the levying of assessments on its assessable stock and the resale of such stock upon the failure of the holder thereof to pay any assessment levied thereon, to furnish the proceeds with which to acquire the securities of such issuer or affiliated issuers, is to be regarded as engaged in the distribution of the securities of such issuer or affiliated issuers within the meaning of section 2(11) of the Act.

[24 FR 6386, Aug. 8, 1959]

§ 230.141 Definition of "commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commissions" in section 2(11), for certain transactions.

(a) The term *commission* in section 2(11) of the Act shall include such remuneration, commonly known as a spread, as may be received by a distributor or dealer as a consequence of reselling securities bought from an underwriter or dealer at a price below the offering price of such securities, where such resales afford the distributor or dealer a margin of profit not in excess of what is usual and customary in such transactions.

(b) The term *commission from an underwriter or dealer* in section 2(11) of the Act shall include commissions paid by an underwriter or dealer directly or indirectly controlling or controlled by, or under direct or indirect common control with the issuer.

(c) The term *usual and customary distributors' or sellers' commission* in section 2(11) of the Act shall mean a commission or remuneration, commonly known as a spread, paid to or received by any person selling securities either for his own account or for the account of others, which is not in excess of the amount usual and customary in the distribution and sale of issues of similar type and size; and not in excess of the amount allowed to other persons, if any, for comparable service in the distribution of the particular issue; but such term shall not include amounts paid to any person whose function is the management of the distribution of all or a substantial part of the particular issue, or who performs the functions normally performed by an underwriter or underwriting syndicate.

[2 FR 1075, May 26, 1937]

§ 230.142 Definition of "participates" and "participation," as used in section 2(11), in relation to certain transactions.

(a) The terms *participates* and *participation* in section 2(11) (48 Stat. 74, 48 Stat. 905; 15 U.S.C. 77b) shall not include the interest of a person

(1) who is not in privity of contract with the issuer nor directly or indirectly controlling, controlled by, or under common control with, the issuer, and

(2) who has no association with any principal underwriter of the securities being distributed, and

(3) whose function in the distribution is confined to an undertaking to purchase all or some specified proportion of the securities remaining unsold after the lapse of some specified period of time, and

(4) who purchases such securities for investment and not with a view to distribution.

(b) As used in this section:

(1) The term *issuer* shall have the meaning defined in section 2(4) (48 Stat. 74, 48 Stat. 905; 15 U.S.C. 77b) and in the last sentence of section 2(11).

(2) The term *association* shall include a relationship between two persons under which one: (i) Is directly or indirectly controlling, controlled by, or under common control with, the other, or

(ii) Has, in common with the other, one or more partners, officers, directors, trustees, branch managers, or other persons occupying a similar status or performing similar functions, or

(iii) Has a participation, direct or indirect, in the profits of the other, or has a financial stake, by debtor-creditor relationship, stock ownership, contract or otherwise, in the income or business of the other.

(3) The term *principal underwriter* shall have the meaning defined in § 230.405.

[3 FR 3015, Dec. 16, 1938]

Cross Reference:
For interpretative release applicable to § 230.142, see No. 1862 in tabulation, part 231, of this chapter.

§ 230.143 Definition of "has purchased", "sells for", "participates", and "participation", as used in section 2(11), in relation to certain transactions of foreign governments for war purposes.

The terms *has purchased, sells for, participates,* and *participation,* in section 2(11) (48 Stat. 74, 48 Stat. 905; 15 U.S.C. 77b), shall not be deemed to apply to any action of a foreign government in acquiring, for war purposes and by or in anticipation of the exercise of war powers, from any person subject to its jurisdiction securities of a person organized under the laws of the United States or any State or Territory, or in disposing of such securities with a view to their distribution by underwriters in the United States, notwithstanding the fact that the price to be paid to such foreign government upon the disposition of such securities by it may be measured by or may be in direct or indirect relation to such price as may be realized by the underwriters.

[6 FR 2052, Apr. 23, 1941]

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

Preliminary Note: Certain basic principles are essential to an understanding of the registration requirements in the Securities Act of 1933 (the Act or the Securities Act) and the purposes underlying Rule 144:

1. If any person sells a non-exempt security to any other person, the sale must be registered unless an exemption can be found for the transaction.

2. Section 4(1) of the Securities Act provides one such exemption for a transaction "by a person other than an issuer, underwriter, or dealer." Therefore, an understanding of the term "underwriter" is important in determining whether or not the Section 4(1) exemption from registration is available for the sale of the securities.

The term “underwriter” is broadly defined in Section 2(a)(11) of the Securities Act to mean any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates, or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking. The interpretation of this definition traditionally has focused on the words “with a view to” in the phrase “purchased from an issuer with a view to * * * distribution.” An investment banking firm which arranges with an issuer for the public sale of its securities is clearly an “underwriter” under that section. However, individual investors who are not professionals in the securities business also may be “underwriters” if they act as links in a chain of transactions through which securities move from an issuer to the public.

Since it is difficult to ascertain the mental state of the purchaser at the time of an acquisition of securities, prior to and since the adoption of Rule 144, subsequent acts and circumstances have been considered to determine whether the purchaser took the securities “with a view to distribution” at the time of the acquisition. Emphasis has been placed on factors such as the length of time the person held the securities and whether there has been an unforeseeable change in circumstances of the holder. Experience has shown, however, that reliance upon such factors alone has led to uncertainty in the application of the registration provisions of the Act.

The Commission adopted Rule 144 to establish specific criteria for determining whether a person is not engaged in a distribution. Rule 144 creates a safe harbor from the Section 2(a)(11) definition of “underwriter.” A person satisfying the applicable conditions of the Rule 144 safe harbor is deemed not to be engaged in a distribution of the securities and therefore not an underwriter of the securities for purposes of Section 2(a)(11). Therefore, such a person is deemed not to be an underwriter when determining whether a sale is eligible for the Section 4(1) exemption for “transactions by any person other than an issuer, underwriter, or dealer.” If a sale of securities complies with all of the applicable conditions of Rule 144:

1. Any affiliate or other person who sells restricted securities will be deemed not to be engaged in a distribution and therefore not an underwriter for that transaction;

2. Any person who sells restricted or other securities on behalf of an affiliate of the issuer will be deemed not to be engaged in a distribution and therefore not an underwriter for that transaction; and

3. The purchaser in such transaction will receive securities that are not restricted securities.

Rule 144 is not an exclusive safe harbor. A person who does not meet all of the applicable conditions of Rule 144 still may claim any other available exemption under the Act for the sale of the securities. The Rule 144 safe harbor is not available to any person with respect to any transaction or series of transactions that, although in technical compliance with Rule 144, is part of a plan or scheme to evade the registration requirements of the Act.

(a) *Definitions.* The following definitions shall apply for the purposes of this section.

(1) An *affiliate* of an issuer is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such issuer.

(2) The term *person* when used with reference to a person for whose account securities are to be sold in reliance upon this section includes, in addition to such person, all of the following persons:

(i) Any relative or spouse of such person, or any relative of such spouse, any one of whom has the same home as such person;

(ii) Any trust or estate in which such person or any of the persons specified in paragraph (a)(2)(i) of this section collectively own 10 percent or more of the total beneficial interest or of which any of such persons serve as trustee, executor or in any similar capacity; and

(iii) Any corporation or other organization (other than the issuer) in which such person or any of the persons specified in paragraph (a)(2)(i) of this section are the beneficial owners collectively of 10 percent or more of any class of equity securities or 10 percent or more of the equity interest.

(3) The term *restricted securities* means:

(i) Securities acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving any public offering;

(ii) Securities acquired from the issuer that are subject to the resale limitations of § 230.502(d) under Regulation D or § 230.701(c);

(iii) Securities acquired in a transaction or chain of transactions meeting the requirements of § 230.144A;

(iv) Securities acquired from the issuer in a transaction subject to the conditions of Regulation CE (§ 230.1001);

(v) Equity securities of domestic issuers acquired in a transaction or chain of transactions subject to the conditions of § 230.901 or § 230.903 under Regulation S (§ 230.901 through § 230.905, and Preliminary Notes);

(vi) Securities acquired in a transaction made under § 230.801 to the same extent and proportion that the securities held by the security holder of the class with respect to which the rights offering was made were, as of the record date for the rights offering, "restricted securities" within the meaning of this paragraph (a)(3);

(vii) Securities acquired in a transaction made under § 230.802 to the same extent and proportion that the securities that were tendered or exchanged in the exchange offer or business combination were "restricted securities" within the meaning of this paragraph (a)(3); and

(viii) Securities acquired from the issuer in a transaction subject to an exemption under section 4(5) (15 U.S.C. 77d(5)) of the Act.

(4) The term *debt securities* means:

(i) Any security other than an equity security as defined in § 230.405;

(ii) Non-participatory preferred stock, which is defined as non-convertible capital stock, the holders of which are entitled to a preference in payment of dividends and in distribution of assets on liquidation, dissolution, or winding up of the issuer, but are not entitled to participate in residual earnings or assets of the issuer; and

(iii) Asset-backed securities, as defined in § 229.1101 of this chapter.

(b) *Conditions to be met.* Subject to paragraph (i) of this section, the following conditions must be met:

(1) *Non-affiliates.*

(i) If the issuer of the securities is, and has been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 (the Exchange Act), any person who is not an affiliate of the issuer at the time of the sale, and has not been an affiliate during the preceding three months, who sells restricted securities of the issuer for his or her own account shall be deemed not to be an underwriter of those securities within the meaning of section 2(a)(11) of the Act if all of the conditions of paragraphs (c)(1) and (d) of this section are met. The requirements of paragraph (c)(1) of this section shall not apply to restricted securities sold for the account of a person who is not an affiliate of the issuer at the time of the sale and has not been an affiliate during the preceding three months, provided a period of one year has elapsed since the later of the date the securities were acquired from the issuer or from an affiliate of the issuer.

(ii) If the issuer of the securities is not, or has not been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, any person who is not an affiliate of the issuer at the time of the sale, and has not been an affiliate during the preceding three months, who sells restricted securities of the issuer for his or her own account shall be deemed not to be an underwriter of those securities within the meaning of section 2(a)(11) of the Act if the condition of paragraph (d) of this section is met.

(2) *Affiliates or persons selling on behalf of affiliates.* Any affiliate of the issuer, or any person who was an affiliate at any time during the 90 days immediately before the sale, who sells restricted securities, or any person who sells restricted or any other securities for the account of an affiliate of the issuer of such securities, or any person who sells restricted or any other securities for the account of a person who was an affiliate at any time during the 90 days immediately before the sale, shall be deemed not to be an underwriter of those securities within the meaning of section 2(a)(11) of the Act if all of the conditions of this section are met.

(c) *Current public information.* Adequate current public information with respect to the issuer of the securities must be available. Such information will be deemed to be available only if the applicable condition set forth in this paragraph is met:

(1) *Reporting issuers.* The issuer is, and has been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act and has:

(i) Filed all required reports under section 13 or 15(d) of the Exchange Act, as applicable, during the 12 months preceding such sale (or for such shorter period that the issuer was required to file such reports), other than Form 8-K reports (§ 249.308 of this chapter); and

(ii) Submitted electronically every Interactive Data File (§ 232.11 of this chapter) required to be submitted pursuant to § 232.405 of this chapter, during the 12 months preceding such sale (or for such shorter period that the issuer was required to submit such files); or

(2) *Non-reporting issuers.* If the issuer is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, there is publicly available the information concerning the issuer specified in paragraphs (b)(5)(i)(A) to (N), inclusive, and paragraph (b)(5)(i)(P) of § 240.15c2-11 of this chapter, or, if the issuer is an insurance company, the information specified in section 12(g)(2)(G)(i) of the Exchange Act (15 U.S.C. 78*l*(g)(2)(G)(i)).

Note to § 230.144(c): With respect to paragraph (c)(1), the person can rely upon:
1. A statement in whichever is the most recent report, quarterly or annual, required to be filed and filed by the issuer that such issuer has:

a. Filed all reports required under section 13 or 15(d) of the Exchange Act, as applicable, during the preceding 12 months (or for such shorter period that the issuer was required to file such reports), other than Form 8-K reports (§ 249.308 of this chapter), and has been subject to such filing requirements for the past 90 days; and

b. Submitted electronically every Interactive Data File (§ 232.11 of this chapter) required to be submitted pursuant to § 232.405 of this chapter, during the preceding 12 months (or for such shorter period that the issuer was required to submit such files); or

2. A written statement from the issuer that it has complied with such reporting or submission requirements.

3. Neither type of statement may be relied upon, however, if the person knows or has reason to believe that the issuer has not complied with such requirements.

(d) *Holding period for restricted securities.* If the securities sold are restricted securities, the following provisions apply:

(1) *General rule.*

(i) If the issuer of the securities is, and has been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, a minimum of six months must elapse between the later of the date of the acquisition of the securities from the issuer, or from an affiliate of the issuer, and any resale of such securities in reliance on this section for the account of either the acquiror or any subsequent holder of those securities.

(ii) If the issuer of the securities is not, or has not been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, a minimum of one year must elapse between the later of the date of the acquisition of the securities from the issuer, or from an affiliate of the issuer, and any resale of such securities in reliance on this section for the account of either the acquiror or any subsequent holder of those securities.

(iii) If the acquiror takes the securities by purchase, the holding period shall not begin until the full purchase price or other consideration is paid or given by the person acquiring the securities from the issuer or from an affiliate of the issuer.

(2) *Promissory notes, other obligations or installment contracts.* Giving the issuer or affiliate of the issuer from whom the securities were purchased a promissory note or other obligation to pay the purchase price, or entering into an installment purchase contract with such seller, shall not be deemed full payment of the purchase price unless the promissory note, obligation or contract:

(i) Provides for full recourse against the purchaser of the securities;

(ii) Is secured by collateral, other than the securities purchased, having a fair market value at least equal to the purchase price of the securities purchased; and

(iii) Shall have been discharged by payment in full prior to the sale of the securities.

(3) *Determination of holding period.* The following provisions shall apply for the purpose of determining the period securities have been held:

(i) *Stock dividends, splits and recapitalizations.* Securities acquired from the issuer as a dividend or pursuant to a stock split, reverse split or recapitalization shall be deemed to have been acquired at the same time as the securities on which the dividend or, if more than one, the initial dividend was paid, the securities involved in the split or reverse split, or the securities surrendered in connection with the recapitalization.

(ii) *Conversions and exchanges.* If the securities sold were acquired from the issuer solely in exchange for other securities of the same issuer, the newly acquired securities shall be deemed to have been acquired at the same time as the securities surrendered for conversion or
exchange, even if the securities surrendered were not convertible or exchangeable by their terms.

Note to § 230.144(d)(3)(ii): If the surrendered securities originally did not provide for cashless conversion or exchange by their terms and the holder provided consideration, other than solely securities of the same issuer, in connection with the amendment of the surrendered securities to permit cashless conversion or exchange, then the newly acquired securities shall be deemed to have been acquired at the same time as such amendment to the surrendered securities, so long as, in the conversion or exchange, the securities sold were acquired from the issuer solely in exchange for other securities of the same issuer.

(iii) *Contingent issuance of securities.* Securities acquired as a contingent payment of the purchase price of an equity interest in a business, or the assets of a business, sold to the issuer or an affiliate of the issuer shall be deemed to have been acquired at the time of such sale if the issuer or affiliate was then committed to issue the securities subject only to conditions other than the payment of further consideration for such securities. An agreement entered into in connection with any such purchase to remain in the employment of, or not to compete with, the issuer or affiliate or the rendering of services pursuant to such agreement shall not be deemed to be the payment of further consideration for such securities.

(iv) *Pledged securities.* Securities which are bona-fide pledged by an affiliate of the issuer when sold by the pledgee, or by a purchaser, after a default in the obligation secured by the pledge, shall be deemed to have been acquired when they were acquired by the pledgor, except that if the securities were pledged without recourse they shall be deemed to have been acquired by the pledgee at the time of the pledge or by the purchaser at the time of purchase.

(v) *Gifts of securities.* Securities acquired from an affiliate of the issuer by gift shall be deemed to have been acquired by the donee when they were acquired by the donor.

(vi) *Trusts.* Where a trust settlor is an affiliate of the issuer, securities acquired from the settlor by the trust, or acquired from the trust by the beneficiaries thereof, shall be deemed to have been acquired when such securities were acquired by the settlor.

(vii) *Estates.* Where a deceased person was an affiliate of the issuer, securities held by the estate of such person or acquired from such estate by the estate beneficiaries shall be deemed to have been acquired when they were acquired by the deceased person, except that no holding period is required if the estate is not an affiliate of the issuer or if the securities are sold by a beneficiary of the estate who is not such an affiliate.

Note to § 230.1449d)(3)(vi)): While there is no holding period or amount limitation for estates and estate beneficiaries which are not affiliates of the issuer, paragraphs (c) and (h) of this section apply to securities sold by such persons in reliance upon this section.

(viii) *Rule 145(a) transactions.* The holding period for securities acquired in a transaction specified in § 230.145(a) shall be deemed to commence on the date the securities were acquired by the purchaser in such transaction, except as otherwise provided in paragraphs (d)(3)(ii) and (ix) of this section.

(ix) *Holding company formations.* Securities acquired from the issuer in a transaction effected solely for the purpose of forming a holding company shall be deemed to have been acquired at the same time as the securities of the predecessor issuer exchanged in the holding company formation where:

(A) The newly formed holding company's securities were issued solely in exchange for the securities of the predecessor company as part of a reorganization of the predecessor company into a holding company structure;

(B) Holders received securities of the same class evidencing the same proportional interest in the holding company as they held in the predecessor, and the rights and interests of the holders of such securities are substantially the same as those they possessed as holders of the predecessor company's securities; and

(C) Immediately following the transaction, the holding company has no significant assets other than securities of the predecessor company and its existing subsidiaries and has
substantially the same assets and liabilities on a consolidated basis as the predecessor company had before the transaction.

(x) *Cashless exercise of options and warrants.* If the securities sold were acquired from the issuer solely upon cashless exercise of options or warrants issued by the issuer, the newly acquired securities shall be deemed to have been acquired at the same time as the exercised options or warrants, even if the options or warrants exercised originally did not provide for cashless exercise by their terms.

Note 1 to § 230.144(d)(3)(x): If the options or warrants originally did not provide for cashless exercise by their terms and the holder provided consideration, other than solely securities of the same issuer, in connection with the amendment of the options or warrants to permit cashless exercise, then the newly acquired securities shall be deemed to have been acquired at the same time as such amendment to the options or warrants so long as the exercise itself was cashless.

Note 2 to § 230.144(d)(3)(x): If the options or warrants are not purchased for cash or property and do not create any investment risk to the holder, as in the case of employee stock options, the newly acquired securities shall be deemed to have been acquired at the time the options or warrants are exercised, so long as the full purchase price or other consideration for the newly acquired securities has been paid or given by the person acquiring the securities from the issuer or from an affiliate of the issuer at the time of exercise.

(e) *Limitation on amount of securities sold.* Except as hereinafter provided, the amount of securities sold for the account of an affiliate of the issuer in reliance upon this section shall be determined as follows:

(1) If any securities are sold for the account of an affiliate of the issuer, regardless of whether those securities are restricted, the amount of securities sold, together with all sales of securities of the same class sold for the account of such person within the preceding three months, shall not exceed the greatest of:

(i) One percent of the shares or other units of the class outstanding as shown by the most recent report or statement published by the issuer, or

(ii) The average weekly reported volume of trading in such securities on all national securities exchanges and/or reported through the automated quotation system of a registered securities association during the four calendar weeks preceding the filing of notice required by paragraph (h), or if no such notice is required the date of receipt of the order to execute the transaction by the broker or the date of execution of the transaction directly with a market maker, or

(iii) The average weekly volume of trading in such securities reported pursuant to an *effective transaction reporting plan* or an *effective national market system plan* as those terms are defined in § 242.600 of this chapter during the four-week period specified in paragraph (e)(1)(ii) of this section.

(2) If the securities sold are debt securities, then the amount of debt securities sold for the account of an affiliate of the issuer, regardless of whether those securities are restricted, shall not exceed the greater of the limitation set forth in paragraph (e)(1) of this section or, together with all sales of

sold for the account of such person within the preceding three months, ten percent of the principal amount of the tranche (or class when the securities are non-participatory preferred stock) attributable to the securities sold.

(3) *Determination of amount.* For the purpose of determining the amount of securities specified in paragraph (e)(1) of this section and, as applicable, paragraph (e)(2) of this section, the following provisions shall apply:

(i) Where both convertible securities and securities of the class into which they are convertible are sold, the amount of convertible securities sold shall be deemed to be the amount of securities of the class into which they are convertible for the purpose of determining the aggregate amount of securities of both classes sold;

(ii) The amount of securities sold for the account of a pledgee of those securities, or for the account of a purchaser of the pledged securities, during any period of three months within six months (or within one year if the issuer of the securities is not, or has not been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act) after a default in the obligation secured by the pledge, and the amount of securities sold during the same three-month period for the account of the pledgor shall not exceed, in the aggregate, the amount specified in paragraph (e)(1) or (2) of this section, whichever is applicable;

Note to § 230.144(e)(3)(ii): Sales by a pledgee of securities pledged by a borrower will not be aggregated under paragraph (e)(3)(ii) with sales of the securities of the same issuer by other pledgees of such borrower in the absence of concerted action by such pledgees.

(iii) The amount of securities sold for the account of a donee of those securities during any three month period within six months (or within one year if the issuer of the securities is not, or has not been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act) after the donation, and the amount of securities sold during the same three-month period for the account of the donor, shall not exceed, in the aggregate, the amount specified in paragraph (e)(1) or (2) of this section, whichever is applicable;

(iv) Where securities were acquired by a trust from the settlor of the trust, the amount of such securities sold for the account of the trust during any three-month period within six months (or within one year if the issuer of the securities is not, or has not been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act) after the acquisition of the securities by the trust, and the amount of securities sold during the same three-month period for the account of the settlor, shall not exceed, in the aggregate, the amount specified in paragraph (e)(1) or (2) of this section, whichever is applicable;

(v) The amount of securities sold for the account of the estate of a deceased person, or for the account of a beneficiary of such estate, during any three-month period and the amount of securities sold during the same three-month period for the account of the deceased person

prior to his death shall not exceed, in the aggregate, the amount specified in paragraph (e)(1) or (2) of this section, whichever is applicable: *Provided,* that no limitation on amount shall apply if the estate or beneficiary of the estate is not an affiliate of the issuer;

(vi) When two or more affiliates or other persons agree to act in concert for the purpose of selling securities of an issuer, all securities of the same class sold for the account of all such persons during any three-month period shall be aggregated for the purpose of determining the limitation on the amount of securities sold;

(vii) The following sales of securities need not be included in determining the amount of securities to be sold in reliance upon this section:

(A) Securities sold pursuant to an effective registration statement under the Act;

(B) Securities sold pursuant to an exemption provided by Regulation A (§ 230.251 through § 230.263) under the Act;

(C) Securities sold in a transaction exempt pursuant to section 4 of the Act (15 U.S.C. 77d) and not involving any public offering; and

(D) Securities sold offshore pursuant to Regulation S (§ 230.901 through § 230.905, and Preliminary Notes) under the Act.

(f) *Manner of sale.*

(1) The securities shall be sold in one of the following manners:

(i) *Brokers' transactions* within the meaning of section 4(4) of the Act;

(ii) Transactions directly with a *market maker*, as that term is defined in section 3(a)(38) of the Exchange Act; or

(iii) *Riskless principal transactions* where:

(A) The offsetting trades must be executed at the same price (exclusive of an explicitly disclosed markup or markdown, commission equivalent, or other fee);

(B) The transaction is permitted to be reported as riskless under the rules of a self-regulatory organization; and

(C) The requirements of paragraphs (g)(2)(applicable to any markup or markdown, commission equivalent, or other fee), (g)(3), and (g)(4) of this section are met.

Note to § 230.144(f)(1): For purposes of this paragraph, a *riskless principal transaction* means a principal transaction where, after having received from a customer an order to buy, a broker or dealer purchases the security as principal in the market to satisfy the order to buy or, after having received from a customer an order to sell, sells the security as principal to the market to satisfy the order to sell.

(2) The person selling the securities shall not:

(i) Solicit or arrange for the solicitation of orders to buy the securities in anticipation of or in connection with such transaction, or