

Explanatory note: Guidance superseded by Rule 152.

Question 134.02

Question: ~~A company with a pending registration statement intends to withdraw the registration statement and immediately thereafter complete the same offering without registration in reliance upon the Section 4(2) private offering exemption. Is this consistent with Section 5 of the Securities Act?~~

Answer: ~~No. The filing of a registration statement for a specific securities offering (as contrasted with a generic shelf registration) constitutes a general solicitation for that securities offering, thus rendering Section 4(2) unavailable for the same offering. As the Commission noted in Securities Act Release No. 8828 (Aug. 3, 2007), in footnote 122, “the Commission or a court could find a violation of Section 5 where a company begins an offering as a private placement and seeks to complete that offering pursuant to a registration statement, or where a company commences a registered offering and seeks to complete that offering through a private placement, except in those circumstances specified in Securities Act Rule 155.” [Nov. 26, 2008]~~ <https://www.sec.gov/rules/proposed/2007/33-8828.pdf>

[Withdrawn January 23, 2026]