

412
and
430B/C
Combined

412 Modified or Superseded Documents

- (a) Add at the end the following sentence: "In the case of offerings pursuant to Rule 415, the provisions of this paragraph are subject to the provisions of paragraph (h) of section 430 [B/C]."
- (d) Delete paragraph (d) and modify paragraph (h) of section 430 [B/C] to consolidate this paragraph (d), paragraph (g) of proposed Rule 430B and paragraph (b) of proposed Rule 430C.

430B/C Offerings pursuant to Rule 415 - Prospectus in registration statement after effective date

- (a) In offerings pursuant to Rule 415(a)(1) [, other than clause (vii) Necessary?], a form of prospectus filed as part of the registration statement may omit information as to whether the offering is a primary offering or an offering on behalf of persons other than the issuer, the plan of distribution for the securities, and the identification of other issuers unless known.
430B(a)
2d sentence
- (b) In offerings pursuant to clause (i) of Rule 415(a)(1) by an issuer eligible to use Form S-3 or Form F-3 for primary offerings pursuant to General Instruction I.B.1 of such forms, a form of prospectus filed as part of a registration statement may also omit the identities of selling security holders and amounts of securities to be registered [sold?] on their behalf if
430B(b)
 - (1) The registration statement is an automatic shelf registration statement as defined in Rule 405; or

- (2) All of the following conditions are satisfied:
- (i) The offering in which the selling security holders acquired the securities being registered on their behalf was completed;
 - (ii) The securities were issued and outstanding prior to the original date of filing the registration statement covering the resale of the securities; and
 - (iii) The registration statement refers to any unnamed selling security holders in a generic manner by identifying the transaction in which the securities were acquired.

430B(a)
1st sentence

(c) In offerings pursuant to clauses (viii) or (x) of Rule 415(c)(1), a form of prospectus filed as part of a registration statement may omit information that is unknown or not reasonably available to the issuer pursuant to Rule 409. [Why is this paragraph necessary? Does including it suggest that Rule 409 is not available under other clauses of Rule 415(a)(1)?]

430B(d)

(d) Information omitted from a form of prospectus [that is part of an effective registration statement] in reliance on the foregoing paragraphs of this section may be included in the prospectus by a post-effective amendment to the registration statement, a prospectus filed pursuant to Rule 424 or, if the applicable form permits, by including the information in the issuer's periodic or current reports filed pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 that are incorporated or deemed incorporated by reference into the prospectus in accordance with applicable requirements.

430B(e) (e) Information omitted from a form of prospectus [that is part of an effective registration statement] in reliance on the foregoing paragraphs of this section that is contained in a form of prospectus filed with the Commission pursuant to Rule 424(b)(3) shall be deemed part of and included in the registration statement as of the date it is first used after effectiveness.

430B(f) (f) Information omitted from a form of prospectus [that is part of an effective registration statement] in reliance on the foregoing paragraphs of this section that is contained in a form of prospectus filed with the Commission pursuant to Rule 424(b)(2), (b)(5), (b)(7) or (b)(8) shall be deemed to be part of and included in the registration statement on the earlier of the date such form of prospectus is first used or the date and time of the first contract of sale of securities to which such subsequent form of prospectus relates. Such date shall be deemed, for liability purposes only, to be a new effective date of the registration statement relating to the securities to which such subsequent form of prospectus relates and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. *Provided, however, that, except for any prospectus filed for purposes of including information required by section 10(b)(3) of the Act, the provisions of Rule 401 do not apply when prospectuses are deemed part of or included in registration statements. 【Is proviso written this way so as to apply to all preceding sentences?】*

430C(a) (g) In offerings pursuant to clause (i) or (ix) of Rule 415(a)(1) by issuers not subject to the reporting requirements of section 13 or section 15(d) of the Securities Exchange Act of 1934 or not eligible to register a primary offering of its securities on Form S-3 pursuant to General Instructions I.B.1, I.B.2, I.C., or I.D. or Form F-3 pursuant to General Instructions I.A.5, I.B.1, I.B.2 or I.C., information

contained in a form of prospectus filed with the Commission pursuant to (i) Rule 424(b)(3) for the purpose of providing the information required by section 10(a) of the Act, other than section 10(a)(3) of the Act, or for the purpose of providing information relating to the issuer or identified selling security holders that constitutes a substantive change from or addition to the information in the last form of prospectus filed, or (ii) Rule 497(c) or (e) shall be deemed to be part of and included in the registration statement on the date it is first used after effectiveness. Nothing in this paragraph shall affect the information required to be included in an issuer's registration statement and prospectus.

430C(c)

(h) Notwithstanding paragraph (a) of section 412 and paragraphs (e), (f) and (g) of this section, no statement in a document incorporated or deemed incorporated by reference or a prospectus deemed part of and included in a registration statement [or the prospectus] will supersede or modify any statement that was in a document incorporated or deemed incorporated by reference or a prospectus deemed part of and included in a registration statement [or the prospectus] as to any purchaser who had a date and time of contract of sale (i) in the case of paragraphs (e) and (f), prior to the effective date occurring based on the filed prospectus and (ii) in the case of paragraph (g), prior to the date the filed prospectus was deemed part of the registration statement.

? { 412(d)
430B(g)
430C(b)

(i) Each prospectus filed as part of a registration statement in reliance on [paragraphs (a) and (c) of?] this section shall be deemed to have been filed as part of the registration statement for the purpose of section 7 of the Act. [In proposal this statement would apply to (a) and (c) above but not (b) and is not in 430C. Is it really necessary?] A form of prospectus that is part of a registration statement that omits information in reliance upon paragraph (a), (b)

430B(a)

430B(c)

430B(c)

or (c) of this section meets the requirements of section 10 of the Act for the purpose of section 5(b)(1) thereof. This provision shall not limit the information required to be contained in a form of prospectus in order to meet the requirements of section 10(a) of the Act for the purposes of section 5(b)(2) thereof or exception (a) of section 2(a)(10) thereof.

430B(h)

430c(d)

- (j) Issuers relying on this section shall furnish the undertakings required by Item 512(a) of Regulation S-K, Item 512(a) and/or (g) of Regulation S-B, or Item 34.4 of Form N-2, as applicable.