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## Title 17 —Commodity and Securities Exchanges

### Chapter II —Securities and Exchange Commission

### Part 230 —General Rules and Regulations, Securities Act of 1933

#### General Requirements

**Authority:** 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78o-7 note, 78t, 78w, 78l(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. See *Part 230 for more*

#### § 230.415 Delayed or continuous offering and sale of securities.

- (a) Securities may be registered for an offering to be made on a continuous or delayed basis in the future, *Provided, That:*
- (1) The registration statement pertains only to:
- (i) Securities which are to be offered or sold solely by or on behalf of a person or persons other than the registrant, a subsidiary of the registrant or a person of which the registrant is a subsidiary;
  - (ii) Securities which are to be offered and sold pursuant to a dividend or interest reinvestment plan or an employee benefit plan of the registrant;
  - (iii) Securities which are to be issued upon the exercise of outstanding options, warrants or rights;
  - (iv) Securities which are to be issued upon conversion of other outstanding securities;
  - (v) Securities which are pledged as collateral;
  - (vi) Securities which are registered on Form F-6 (§ 239.36 of this chapter);
  - (vii) Asset-backed securities (as defined in 17 CFR 229.1101(c)) registered (or qualified to be registered) on Form SF-3 (§ 239.45 of this chapter) which are to be offered and sold on an immediate or delayed basis by or on behalf of the registrant;
- Instruction to paragraph (a)(1)(vii):* The requirements of General Instruction I.B.1 of Form SF-3 (§ 239.45 of this chapter) must be met for any offerings of an asset-backed security (as defined in 17 CFR 229.1101(c)) registered in reliance on this paragraph (a)(1)(vii).
- (viii) Securities which are to be issued in connection with business combination transactions;
  - (ix) Securities, other than asset-backed securities (as defined in 17 CFR 229.1101(c)), the offering of which will be commenced promptly, will be made on a continuous basis and may continue for a period in excess of 30 days from the date of initial effectiveness;
  - (x) Securities registered (or qualified to be registered) on Form S-3 or Form F-3 (§ 239.13 or § 239.33 of this chapter), or on Form N-2 (§§ 239.14 and 274.11a-1 of this chapter) pursuant to General Instruction A.2 of that form, which are to be offered and sold on an immediate, continuous or delayed basis by or on behalf of the registrant, a majority-owned subsidiary of the registrant or a person of which the registrant is a majority-owned subsidiary; or

- (xi) Shares of common stock which are to be offered and sold on a delayed or continuous basis by or on behalf of a registered closed-end investment company or business development company that makes periodic repurchase offers pursuant to § 270.23c-3 of this chapter.
- (xii) Asset-backed securities (as defined in 17 CFR 229.1101(c)) that are to be offered and sold on a continuous basis if the offering is commenced promptly and being conducted on the condition that the consideration paid for such securities will be promptly refunded to the purchaser unless:
  - (A) All of the securities being offered are sold at a specified price within a specified time; and
  - (B) The total amount due to the seller is received by him by a specified date.
- (xiii) Exchange-traded vehicle securities which are to be offered and sold on a continuous basis by or on behalf of the registrant in accordance with § 230.456(d) (Rule 456(d)).
- (2) Securities in paragraphs (a)(1)(viii) and (ix) of this section that are not registered on Form S-3 or Form F-3 (§ 239.13 or § 239.33 of this chapter), or on Form N-2 (§§ 239.14 and 274.11a-1 of this chapter) pursuant to General Instruction A.2 of that form, may only be registered in an amount which, at the time the registration statement becomes effective, is reasonably expected to be offered and sold within two years from the initial effective date of the registration.
- (3) The registrant furnishes the undertakings required by Item 512(a) of Regulation S-K (§ 229.512(a) of this chapter), except that a registrant that is an investment company filing on Form N-2 must furnish the undertakings required by Item 34.4 of Form N-2 (§ 239.14 and § 274.11a-1 of this chapter).
- (4) In the case of a registration statement pertaining to an at the market offering of equity securities by or on behalf of the registrant, the offering must come within paragraph (a)(1)(x) of this section. As used in this paragraph, the term “at the market offering” means an offering of equity securities into an existing trading market for outstanding shares of the same class at other than a fixed price.
- (5) Securities registered on an automatic shelf registration statement and securities described in paragraphs (a)(1)(vii), (ix), and (x) of this section may be offered and sold only if not more than three years have elapsed since the initial effective date of the registration statement under which they are being offered and sold, *provided, however*, that if a new registration statement has been filed pursuant to paragraph (a)(6) of this section:
  - (i) If the new registration statement is an automatic shelf registration statement, it shall be immediately effective pursuant to Rule 462(e) (§ 230.462(e)); or
  - (ii) If the new registration statement is not an automatic shelf registration statement:
    - (A) Securities covered by the prior registration statement may continue to be offered and sold until the earlier of the effective date of the new registration statement or 180 days after the third anniversary of the initial effective date of the prior registration statement; and
    - (B) A continuous offering of securities covered by the prior registration statement that commenced within three years of the initial effective date may continue until the effective date of the new registration statement if such offering is permitted under the new registration statement.
- (6) Prior to the end of the three-year period described in paragraph (a)(5) of this section, an issuer may file a new registration statement covering securities described in such paragraph (a)(5) of this section, which may, if permitted, be an automatic shelf registration statement. The new registration

statement and prospectus included therein must include all the information that would be required at that time in a prospectus relating to all offering(s) that it covers. Prior to the effective date of the new registration statement (including at the time of filing in the case of an automatic shelf registration statement), the issuer may include on such new registration statement any unsold securities covered by the earlier registration statement by identifying on the bottom of the facing page of the new registration statement or latest amendment thereto, unless expressly required in another part of the registration statement, the amount of such unsold securities being included and any filing fee paid in connection with such unsold securities, which will continue to be applied to such unsold securities. The offering of securities on the earlier registration statement will be deemed terminated as of the date of effectiveness of the new registration statement.

- (b) This section shall not apply to any registration statement pertaining to a registered non-variable annuity, securities issued by a face-amount certificate company, or redeemable securities issued by an open-end management company or unit investment trust under the Investment Company Act of 1940 or any registration statement filed by any foreign government or political subdivision thereof.

[48 FR 52896, Nov. 23, 1983, as amended at 59 FR 43470, Aug. 24, 1994; 70 FR 44812, Aug. 3, 2005; 73 FR 968, Jan. 4, 2008; 79 FR 57329, Sept. 24, 2014; 85 FR 33354, June 1, 2020; 87 FR 70199, Dec. 9, 2021; 89 FR 60083, July 24, 2024]