such registration statement upon its effectiveness shall be deemed part of the earlier filed registration statement with respect to such offering.

13. By adding § 230.434 to read as follows:

## § 230.434 Prospectus delivery requirements in firm commitment underwritten offerings of securities for cash

- (a) Where securities, other than assetbacked securities and structured securities, are offered for cash in a firm commitment underwritten offering and the conditions described in paragraph (b) or paragraph (c) of this section are satisfied:
- (1) The prospectus subject to completion and the supplementing memorandum described in paragraphs (b)(1) and (b)(2) of this section, taken together, and the prospectus subject to completion and the supplementing memorandum described in paragraphs (c)(1) and (c)(2) of this section, taken together, shall constitute prospectuses that meet the requirements of Section 10(a) of the Act (15 U.S.C. 77j(a)) for purposes of Section 5(b)(2) and Section 2(10)(a) of the Act (15 U.S.C. 77e(b)(2) and 77b(10)(a)); and
- (2) Such Section 10(a) prospectuses shall have:
- (i) Been sent or given prior to or at the same time that a confirmation is sent or given for purposes of Section 2(10)(a) of the Act; and
- (ii) Accompanied or preceded the transmission of the securities for purposes of sale or for delivery after sale for purposes of Section 5(b)(2) of the Act.
- (b) With respect to offerings of securities (other than offerings pursuant to Rule 415 under the Act (§ 230.415)) that are registered on any form other than Form S–3 or Form F–3 (§§ 239.13 and 239.33 of this chapter) under the Act the following conditions are satisfied:
- (1) A prospectus subject to completion and any supplementing memorandum described in paragraph (b)(3) of this section are sent or given prior to or at the same time with the confirmation;
- (2) Except for information omitted from the prospectus in a registration statement at the time of effectiveness in accordance with Rule 430A (§ 230.430A), such prospectus subject to completion and supplementing memorandum, together, are not materially different from the prospectus in the registration statement at the time of its effectiveness or post-effective

- amendment thereto at the time of its effectiveness; and
- (3) A supplementing memorandum setting forth all information material to investors with respect to the offering that is not disclosed in the prospectus subject to completion or the confirmation is filed with the Commission pursuant to Rule 424(b)(1) under the Act (§ 230.424(b)(1)).
- (c) With respect to offerings of securities (other than offerings pursuant to Rule 415(a)(1)(i)-(ix) and (xi) (§ 230.415(a)(1)(i)-(ix) and (xi)) that are registered on Form S–3 or Form F–3 (§§ 239.13 and 239.33 of this chapter) the following conditions are satisfied:
- (1) A prospectus subject to completion and the abbreviated supplementing memorandum described in paragraph (c)(2) of this section are sent or given prior to or at the same time with the confirmation;
- (2) The abbreviated supplementing memorandum delivered to investors sets forth:
- (i) If not disclosed in the prospectus subject to completion, a description of securities required to be disclosed pursuant to Item 202 of Regulation S–K (17 CFR 229.202 of this chapter), or a fair and accurate summary thereof; and
- (ii) If not disclosed in the registrant's Exchange Act reports or the prospectus subject to completion, all material changes in the registrant's affairs required to be disclosed pursuant to Item 11 of Form S–3 or Form F–3 (§§ 239.13 and 239.33 of this chapter), as applicable;
- (3) The abbreviated supplementing memorandum described in paragraph (c)(2) of this section is filed with the Commission pursuant to Rule 424(b)(1) under the Act (§ 230.424(b)(1)) or, if the disclosure represents a fundamental change in the information set forth in the prospectus filed as part of the registration statement declared effective or any post-effective amendment thereto, is filed in a post-effective amendment to the registration statement that is declared effective prior to the time any confirmation is sent or given;
- (4) In an offering made pursuant to Rule 415(a)(1)(x) under the Act (§ 230.415(a)(1)(x)), a form of prospectus is filed pursuant to Rule 424(e) under the Act (§ 230.424(e)), and in an offering not made pursuant to Rule 415(a)(1)(x) under the Act (§ 230.415(a)(1)(x)), a prospectus meeting the requirements of Section 10(a) of the Act other than by virtue of paragraph (a)(1) of this section is filed with the Commission prior to the effective date of the registration statement; and

- (d) The information contained in any form of prospectus filed with the Commission pursuant to Rule 424(e) under the Act (§ 230.424(e)) shall be deemed to be a part of the registration statement as of the time such information is filed with the Commission.
- (e) For purposes of this section, assetbacked securities shall mean assetbacked securities as defined in General Instruction I.B.5 of Form S-3 (§ 239.13 of this chapter).
- (f) For purposes of this section, prospectus subject to completion shall mean any prospectus that is either a preliminary prospectus used in reliance on Rule 430 (§ 230.430), a prospectus filed in accordance with Rule 430A(a) (§ 230.430A(a)), or a prospectus omitting information that is not yet known concerning a delayed offering pursuant to Rule 415(a)(i)(x) under the Act (§ 230.415(a)(1)(x)) that is contained in a registration statement at the time of effectiveness.
- (g) Notwithstanding paragraphs (a) through (f) of this section, this section shall not apply to the offering of any security of any company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq., as amended) or any company that is exempt from the requirement to register under that Act through filing either a notification of election or a notice of intent to file a notification of election to be treated as a business development company under that Act.
- 14. By designating the existing text as paragraph (a) and adding paragraph (b) to § 230.439 to read as follows:

## $\S\,230.439$ Consent to use of material incorporated by reference.

(a) \* \* \*

- (b) In a registration statement filed pursuant to Rule 462(b) under the Act (§ 230.462(b)), any required consent may be incorporated by reference into the registration statement from a previously filed registration statement relating to the offering, provided that the consent contained in the previously filed registration statement expressly provides for such incorporation. Any consent filed in a Rule 462(b) (§ 230.462(b)) registration statement may contain duplicated or facsimile versions of required signatures, and such signatures shall be considered manually signed for purposes of the Act and the rules thereunder.
- 15. By amending § 230.457 to revise paragraph (o) to read as follows:

§ 230.457 Computation of fee.

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