

Santiago, 29 de enero de 2014  
GG/040/2014

Señor  
**Fernando Coloma Correa**  
**Superintendente**  
**Superintendencia de Valores y Seguros**  
Presente

Ref.: HECHO ESENCIAL. Empresa de Transporte de Pasajeros Metro S.A. Inscripción en el Registro de Valores N°421. Emisión y colocación de bonos en el extranjero.

De mi consideración:

En conformidad a lo establecido en los artículos 9 y 10 de la Ley de Mercado de Valores, en la Sección II de la Norma de Carácter General N° 30 de esta Superintendencia y en especial a lo dispuesto por la Circular N° 1.072 de 1992, también de esta Superintendencia, debidamente facultado, informo a usted, lo siguiente:

Con fecha 4 de febrero de 2014 Empresa de Transporte de Pasajeros Metro S.A. (la "Sociedad") emitirá y colocará en el mercado internacional bonos emitidos bajo la Regla 144A y la Regulación S de la Ley de Mercado de Valores de Estados Unidos de América, por un monto de U.S. \$ 500.000.000.

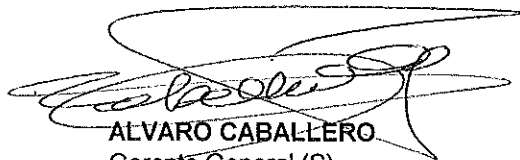
Al respecto, y con el objeto de dar cumplimiento a la normativa mencionada más arriba, se adjuntan los siguientes documentos:

1. Formulario Hecho Esencial, correspondiente al Anexo de la Circular 1.072 de 1992.
2. Copia de norma correspondiente a la *Rule 144A* de la *Securities Act* de 1933 de los Estados Unidos de América, que establece en su sección (d) (4) obligaciones de información al emisor.
3. Resumen en español que da cuenta de las principales características de los documentos antes señalados.

Los demás documentos requeridos por la Circular N° 1.072 de 1992 serán debidamente entregados a de esta Superintendencia, tan pronto como sean suscritos por las respectivas partes.

Desde ya quedamos a su disposición para aclarar o complementar cualquier información que usted estime necesaria.

Sin otro particular, saluda atentamente a Ud.,



**ALVARO CABALLERO**  
Gerente General (S)  
Metro S.A.



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**HECHO ESENCIAL**  
**COLOCACIÓN DE BONOS EN EL EXTRANJERO**

**1.0 IDENTIFICACIÓN DEL EMISOR**

- |     |                                   |   |
|-----|-----------------------------------|---|
| 1.1 | Razón Social                      | Empresa de Transporte de Pasajeros Metro S.A  |
| 1.2 | Nombre de fantasía                | Metro S.A.  |
| 1.3 | R.U.T.                            | 61.219.000 - 3  |
| 1.4 | N° de Inscripción<br>Reg. Valores | 421   |
| 1.5 | Dirección                         | Avenida Libertador Bernardo. O'Higgins N° 1.414   |
| 1.6 | Teléfono                          | 2937 2000   |
| 1.7 | Actividades y<br>Negocios         | En conformidad a lo dispuesto por el artículo 2 de los estatutos sociales, el emisor tiene como objeto la realización de todas las actividades propias del servicio de transporte de pasajeros en ferrocarriles metropolitanos u otros medios eléctricos complementarios y las anexas a dicho giro, pudiendo con tal fin constituir o participar en sociedades y ejecutar cualquier acto u operación relacionados con el objeto social. |

**2.0 ESTA COMUNICACIÓN SE HACE EN VIRTUD DE LO ESTABLECIDO EN EL ARTÍCULO 9° E INCISO SEGUNDO DEL ARTÍCULO 10° DE LA LEY 18.045, Y SE TRATA DE UN HECHO ESENCIAL RESPECTO DE LA SOCIEDAD, SUS NEGOCIOS SUS VALORES DE OFERTA PÚBLICA Y /O DE LA OFERTA DE ELLOS, SEGÚN CORRESPONDA.**

**3.0 CARACTERÍSTICAS DE LA EMISIÓN**

- |     |                        |   |
|-----|------------------------|---|
| 3.1 | Moneda de denominación | Dólares de los Estados Unidos de América  |
| 3.2 | Moneda total emisión   | U.S. \$ 500.000.000   |
| 3.3 | Portador/ a la orden   | Los bonos serán registrados a nombre tenedores en los libros de DTC ( <i>book entry</i> ) |
| 3.4 | Series                 | 1   |



- 3.4.1 Monto de la Serie U.S. \$500.000.000
- 3.4.2 N° de bonos N/A
- 3.4.3 Valor nominal bono U.S. \$200.000 mínimo. En caso de suma superiores serán por múltiplos de U.S. \$1.000
- 3.4.4 Tipo reajuste N/A
- 3.4.5 Tasa de interés 4,750%
- 3.4.6 Fecha de emisión 4 de febrero de 2014
- 3.4.7 Para cada serie llenar la siguiente tabla de desarrollo

N° de cuota interés	N° de cuota amortiz.	Fecha	Intereses (USD Millones)	Amortización (USD Millones)	Total cuota (USD Millones)	Saldo Capital (USD Millones)
1		8/4/2014	11.737	0.00	11.737	500.00
2		2/4/2015	11.737	0.00	11.737	500.00
3		8/4/2015	11.737	0.00	11.737	500.00
4		2/4/2016	11.737	0.00	11.737	500.00
5		8/4/2016	11.737	0.00	11.737	500.00
6		2/4/2017	11.737	0.00	11.737	500.00
7		8/4/2017	11.737	0.00	11.737	500.00
8		2/4/2018	11.737	0.00	11.737	500.00
9		8/4/2018	11.737	0.00	11.737	500.00
10		2/4/2019	11.737	0.00	11.737	500.00
11		8/4/2019	11.737	0.00	11.737	500.00
12		2/4/2020	11.737	0.00	11.737	500.00
13		8/4/2020	11.737	0.00	11.737	500.00
14		2/4/2021	11.737	0.00	11.737	500.00
15		8/4/2021	11.737	0.00	11.737	500.00

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16		2/4/2022	11.737	0.00	11.737	500.00
17		8/4/2022	11.737	0.00	11.737	500.00
18		2/4/2023	11.737	0.00	11.737	500.00
19		8/4/2023	11.737	0.00	11.737	500.00
20	1	2/4/2024	11.737	500.00	511.737	0.00

3.5 Garantías Si \_\_\_\_\_ No       /      

3.5.1 Tipo y montos de las garantías

3.6 Amortización extraordinaria Si \_\_\_\_\_ No       /      

3.6.1 Procedimientos y fechas N/A

4.0 OFERTA: Pública \_\_\_\_\_ Privada       /      

5.0 PAÍS DE COLOCACIÓN

5.1 Nombre

Bonos vendidos a los Compradores Iniciales (*Initial Purchasers*) en los Estados Unidos de América

5.2 Normas para obtener autorización de transar

*Rule 144A y Regulation S de la U.S. Securities Act de 1933 de los Estados Unidos de América.*

6.0 INFORMACIÓN QUE PROPORCIONA

6.1 A futuros tenedores de bonos

Empresa de Transporte de Pasajeros Metro S.A. (Metro S.A.) deberá (A) poner a disposición a requerimiento de cualquier tenedor o cualquier comprador potencial designado por uno de los tenedores, la información que deba ser entregada de acuerdo a lo dispuesto por la Regla 144A (d) (4) de la Ley de Valores de Estados Unidos de América; y (B) proporcionar (o en su defecto poner a su disposición electrónicamente y previa notificación) del *Trustee* la siguiente información:

(1) Tan pronto como sea posible, pero en todo caso en un plazo no superior a 135 días contados desde el término de cada uno de los años tributarios (*fiscal years*), copias de los estados financieros auditados correspondiente a dicho año (dando cuenta de los

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ingresos, la situación financiera y el flujo de caja), traducido al inglés y preparado de acuerdo a las normas y regulaciones establecidas por esta la Superintendencia de Valores y Seguros que sean aplicables a dicha fecha y auditada por una firma que sea miembro de una firma reconocida internacionalmente de auditores independientes.

(2) Tan pronto como sea posible, pero en cualquier caso dentro de las 105 días siguientes al término del primer, segundo y tercer trimestre de cada año tributario, copias no auditadas de los estados financieros (sobre una base consolidada) correspondiente a cada uno de dichos periodos (dando cuenta de los ingresos, la situación financiera y el flujo de caja) traducidos al inglés y preparados de acuerdo a las normas y regulaciones dictadas por la Superintendencia de Valores y Seguros.

Lo anterior, es en la medida en que los tenedores de bonos no hayan sido notificados por escrito de que esta información se ha hecho públicamente disponible por su presentación a la SEC (*U.S. Security Exchange Commission*) o a través del sitio web de la sociedad.

## 6.2 A futuros representantes de tenedores de bonos

Ver referencia señaladas en la sección 6.1 precedente.

## 7.0 CONTRATO DE EMISIÓN

### 7.1 Características generales

Contratos de emisión de bonos (*Base Indenture y Supplemental Indenture*) a celebrarse con fecha 4 de febrero de 2014, entre Empresa de Transporte de Pasajeros Metro S.A., como emisor (*Issuer*), y Deutsche Bank Trust Company Americas, como *Trustee, Registrar, Paying Agent y Transfer Agent*, en virtud del cual se emiten bonos a ser colocados en mercados extranjeros bajo la Regla 144A y la Regulación S de la Ley de Valores de Estados Unidos de América, por un monto de U.S. \$500.000.000 pagaderos el año 2024, con un interés de 4,750%.

### 7.2 Derechos y obligaciones de los tenedores de bonos

Los bonos de Empresa de Transporte de Pasajeros Metro S.A. constituyen obligaciones directas, no garantizadas y no subordinadas de la compañía emisora. Los tenedores de bonos pueden declarar exigible anticipadamente el capital más intereses, en los casos formas establecidos en el contrato de emisión y tendrán los demás derechos y obligaciones que se establezcan en el contrato de emisión (*Indenture*).



## 8.0 OTROS ANTECEDENTES IMPORTANTES

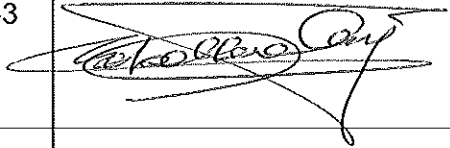
Los bonos no han sido registrados en los Estados Unidos de América bajo la *U.S. Security Act* de 1933, y por lo tanto solamente podrán ser vendidos a ciertos compradores institucionales calificados como tales según lo dispuesto en la Rule 144A de la mencionada ley y/o fuera de los Estados Unidos de América, de acuerdo a lo dispuesto en la *Regulation S* de la mencionada norma.

Se ha solicitado registro para la transacción de los bonos en el Euro MTF Market (*Alternative Market of the Luxemburg Stock Exchange*).

El contrato además contiene ciertas obligaciones de hacer y no hacer (*covenants*) a las que se ha obligado el emisor.

## 9.0 DECLARACIÓN DE RESPONSABILIDAD

La información contenida en este formulario es fidedigna.

Alvaro Caballero Rey	Gerente General (s)	9.492.942-3	
<b>Nombre</b>	<b>Cargo</b>	<b>C.I.</b>	<b>Firma</b>

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RESUMEN

EMISION BONOS EN EL EXTRANJERO

EMPRESA DE TRANSPORTE DE PASAJEROS METRO S.A.

El siguiente es un breve resumen de las características más relevantes de la emisión de bonos 144 A Regulation S que colocará Empresa de Transporte de pasajeros Metro S.A. Una descripción más completa de la emisión se encuentra contenida en el contrato de emisión (*Base Indenture* y *Supplemental Indenture*) y en los demás documentos que se adjuntan a la presente.

Emisor .....	Empresa de Transporte de Pasajeros Metro S.A. (en adelante “Metro” o el “Emisor”).
Monto de la emisión.....	U.S.D. \$ 500 millones.
Vencimiento .....	4 de febrero de 2024.
Tasa de interés.....	4,750%
Precio de emisión ( <i>issue price</i> ) .....	99, 246% del valor nominal ( <i>principal amount</i> ).
Fecha de colocación .....	Los bonos se colocarán el 4 de febrero de 2014.
Fechas de pago de los intereses.....	El pago se realizará los días 4 de febrero y 4 de agosto de cada año, a partir del 4 de febrero de 2014.
Preferencia .....	Los bonos serán emitidos sin preferencia alguna, y tendrán, salvo respecto de aquellas obligaciones a las cuales la ley chilena otorgue un tratamiento preferencial, la misma preferencia de pago que el resto de las obligaciones no garantizadas del Emisor.

Los bonos estarán subordinados al pago de dichas obligaciones respecto de todos aquellos activos que se encuentren garantizando la deuda asegurada preferencialmente.

A pesar de que Metro es una empresa de propiedad íntegramente estatal, el Estado de Chile no responderá por el incumplimiento de ninguna de las obligaciones contraídas en virtud de esta emisión, ni estas obligaciones formarán de manera alguna parte de la deuda de Chile.

Al 30 de septiembre de 2013, la deuda de Metro se distribuía de la siguiente manera: (i) \$1.183.639,5 millones de pesos correspondían a deuda contraída sin preferencia alguna; (ii) \$23.267,3 millones de pesos correspondía a deudas que gozan de algún tipo de preferencia para el pago respecto de la emisión en referencia; y (iii) Aproximadamente \$608.209,1 millones de pesos correspondía a deuda garantizada por el Estado de Chile.

Forma y denominación.....	Los bonos se emitirán en forma de anotaciones en cuenta ( <i>book entry</i> ) totalmente registradas, con una denominación mínima de USD\$200.000 y múltiplos enteros de USD\$1.000 en el exceso de la misma.
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Impuestos .....	Las sumas que correspondan a pago de impuestos que se generen en virtud de la legislación chilena por el pago de intereses que haya de realizarse a un tenedor de bonos extranjero no residente en Chile, serán pagadas adicionalmente por Metro, de manera de que la suma recibida por el tenedor de bono extranjero sea igual a la suma que hubiera recibido en caso de no existir dicho impuesto.
Rescate Voluntario y <i>Make-whole Redemption</i> .....	Los bonos podrán ser rescatados voluntariamente por el Emisor en todo o parte y en cualquier momento, a un precio de rescate que sea igual al valor mayor entre: (1) El 100% del capital insoluto, y (2) La suma de los valores presentes de los bonos de los intereses y amortizaciones de capital restantes, excluidos los intereses devengados hasta la fecha de prepago descontados en base semi anual (considerando años de 360 días compuestos por 12 meses de 30 días cada uno), a la tasa de interés de los bonos del Tesoro de Estados Unidos aplicable más 30 bps (puntos bases). En todos los casos, se sumarán los intereses devengados y no pagados a la fecha de la amortización extraordinaria.
Rescate en caso de cambio tributario .....	El Emisor podrá rescatar a su voluntad la totalidad, pero no una parte de los bonos, en cualquier momento, al valor que corresponda al monto de su capital más los intereses devengados e impagos, si las leyes o regulaciones que norman a los impuestos en la República de Chile cambian en conformidad a lo dispuesto en el contrato de emisión.
Cambio de Control .....	En el caso de que ocurra un evento de cambio de control, los tenedores de bonos podrán exigir a Metro la compra en efectivo de la totalidad o de una parte de los bonos a un precio de compra equivalente al 100% del monto del capital más los intereses devengados y no pagados si los hubiera.
Covenants.....	La emisión está sujeta a una serie de obligaciones de hacer y no hacer ( <i>covenants</i> ), dentro de las cuales se encuentran limitaciones en garantías permitidas y limitaciones en ventas y operaciones de <i>lease back</i> , entre otras.
Legislación Aplicable.....	Los derechos y las obligaciones derivadas del contrato de emisión o en conexión con ellas de Metro y de sus tenedores de bonos, se regirán y se interpretarán en conformidad a las leyes del estado de Nueva York.
Restricciones a las transferencias .....	Los bonos no han sido ni serán registrados bajo la " <i>Securities Act</i> " de los Estados Unidos de América y están sujetas a ciertas restricciones en cuanto a su transferencia.
Uso de los fondos .....	Los fondos netos obtenidos serán destinados para el financiar en parte los activos asociados al proyecto 63 (líneas 3 y 6) y para propósitos corporativos en general.
Compensación y liquidación .....	Los bonos serán representados por uno o más valores globales ( <i>global securities</i> ) registrados a nombre de un representante del

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*Depository Trust Company* o DTC (Depósito de Valores). Los intereses que se deban pagar a los tenedores serán pagados a través de DTC y sus afiliados, directos e indirectos, incluyendo a Euroclear y a Clearstream, Luxemburgo y DTC y sus afiliados directos o indirectos dejarán registro de los intereses de los tenedores en sus libros.

Registro ..... Los bonos serán listados en la Bolsa de Valores de Luxemburgo

Trustee..... Deutsche Bank Trust Company Americas.

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# Securities Lawyer's Deskbook

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General Rules and Regulations  
promulgated  
under the  
Securities Act of 1933

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## Rule 144A -- Private Resales of Securities to Institutions

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### Preliminary Notes

1. This section relates solely to the application of section 5 of the Act and not to antifraud or other provisions of the federal securities laws.
2. Attempted compliance with this section does not act as an exclusive election; any seller hereunder may also claim the availability of any other applicable exemption from the registration requirements of the Act.
3. In view of the objective of this section and the policies underlying the Act, this section is not available with respect to any transaction or series of transactions that, although in technical compliance with this section, is part of a plan or scheme to evade the registration provisions of the Act. In such cases, registration under the Act is required.
4. Nothing in this section obviates the need for any issuer or any other person to comply with the securities registration or broker-dealer registration requirements of the Securities Exchange Act of 1934 (the *Exchange Act*), whenever such requirements are applicable.
5. Nothing in this section obviates the need for any person to comply with any applicable state law relating to the offer or sale of securities.
6. Securities acquired in a transaction made pursuant to the provisions of this section are deemed to be *restricted securities* within the meaning of Rule 144(a)(3).

7. The fact that purchasers of securities from the issuer thereof may purchase such securities with a view to reselling such securities pursuant to this section will not affect the availability to such issuer of an exemption under section 4(2) of the Act, or Regulation D under the Act, from the registration requirements of the Act.

- *Definitions.*

- For purposes of this section, *qualified institutional buyer* shall mean:

- Any of the following entities, acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the entity:

- Any *insurance company* as defined in section 2(a)(13) of the Act ;

Note: A purchase by an insurance company for one or more of its separate accounts, as defined by section 2(a)(37) of the Investment Company Act of 1940 (the "Investment Company Act"), which are neither registered under section 8 of the Investment Company Act nor required to be so registered, shall be deemed to be a purchase for the account of such insurance company.

- Any *investment company* registered under the Investment Company Act or any *business development company* as defined in section 2(a)(48) of that Act;
- Any *Small Business Investment Company* licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958;
- Any *plan* established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees;
- Any *employee benefit plan* within the meaning of title I of the Employee Retirement Income Security Act of 1974;

F. Any trust fund whose trustee is a bank or trust company and whose participants are exclusively plans of the types identified in paragraph (a) (1)(i)(D) or (E) of this section, except trust funds that include as participants individual retirement accounts or H.R. 10 plans.

G. Any *business development company* as defined in section 202(a)(22) of the Investment Advisers Act of 1940;

- Any organization described in section 501(c) (3) of the Internal Revenue Code, corporation (other than a bank as defined in section 3(a)(2) of the Act or a savings and loan association or other institution referenced in section 3(a)(5)(A) of the Act or a foreign bank or savings and loan association or equivalent institution), partnership, or Massachusetts or

similar business trust; and

- Any *investment adviser* registered under the Investment Advisers Act.
- Any *dealer* registered pursuant to section 15 of the Exchange Act, acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least \$10 million of securities of issuers that are not affiliated with the dealer, *Provided*, That securities constituting the whole or a part of an unsold allotment to or subscription by a dealer as a participant in a public offering shall not be deemed to be owned by such dealer;
- Any *dealer* registered pursuant to section 15 of the Exchange Act acting in a riskless principal transaction on behalf of a qualified institutional buyer;

Note: A registered dealer may act as agent, on a non-discretionary basis, in a transaction with a qualified institutional buyer without itself having to be a qualified institutional buyer.

- Any investment company registered under the Investment Company Act, acting for its own account or for the accounts of other qualified institutional buyers, that is part of a family of investment companies which own in the aggregate at least \$100 million in securities of issuers, other than issuers that are affiliated with the investment company or are part of such family of investment companies. *Family of investment companies* means any two or more investment companies registered under the Investment Company Act, except for a unit investment trust whose assets consist solely of shares of one or more registered investment companies, that have the same investment adviser (or, in the case of unit investment trusts, the same depositor), *Provided That*, for purposes of this section:
  - Each series of a series company (as defined in Rule 18f-2 under the Investment Company Act ) shall be deemed to be a separate investment company; and
  - Investment companies shall be deemed to have the same adviser (or depositor) if their advisers (or depositors) are majority-owned subsidiaries of the same parent, or if one investment company's adviser (or depositor) is a majority-owned subsidiary of the other investment company's adviser (or depositor);
- Any entity, all of the equity owners of which are qualified institutional buyers, acting for its own account or the accounts of other qualified institutional buyers; and
- Any *bank* as defined in section 3(a)(2) of the Act, any savings and loan association or other institution as referenced in section 3(a)(5)(A) of the Act, or any foreign bank or savings and loan association or equivalent institution, acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least \$100 million in

securities of issuers that are not affiliated with it and that has an audited net worth of at least \$25 million as demonstrated in its latest annual financial statements, as of a date not more than 16 months preceding the date of sale under the Rule in the case of a U.S. bank or savings and loan association, and not more than 18 months preceding such date of sale for a foreign bank or savings and loan association or equivalent institution.

- In determining the aggregate amount of securities owned and invested on a discretionary basis by an entity, the following instruments and interests shall be excluded: bank deposit notes and certificates of deposit; loan participations; repurchase agreements; securities owned but subject to a repurchase agreement; and currency, interest rate and commodity swaps.
  - The aggregate value of securities owned and invested on a discretionary basis by an entity shall be the cost of such securities, except where the entity reports its securities holdings in its financial statements on the basis of their market value, and no current information with respect to the cost of those securities has been published. In the latter event, the securities may be valued at market for purposes of this section.
  - In determining the aggregate amount of securities owned by an entity and invested on a discretionary basis, securities owned by subsidiaries of the entity that are consolidated with the entity in its financial statements prepared in accordance with generally accepted accounting principles may be included if the investments of such subsidiaries are managed under the direction of the entity, except that, unless the entity is a reporting company under section 13 or 15(d) of the Exchange Act, securities owned by such subsidiaries may not be included if the entity itself is a majority-owned subsidiary that would be included in the consolidated financial statements of another enterprise.
  - For purposes of this section, *riskless principal transaction* means a transaction in which a dealer buys a security from any person and makes a simultaneous offsetting sale of such security to a qualified institutional buyer, including another dealer acting as riskless principal for a qualified institutional buyer.
  - For purposes of this section, *effective conversion premium* means the amount, expressed as a percentage of the security's conversion value, by which the price at issuance of a convertible security exceeds its conversion value.
  - For purposes of this section, *effective exercise premium* means the amount, expressed as a percentage of the warrant's exercise value, by which the sum of the price at issuance and the exercise price of a warrant exceeds its exercise value.
- b. *Sales by persons other than issuers or dealers.* Any person, other than the issuer or a dealer, who offers or sells securities in compliance with the conditions set forth in paragraph (d) of this section shall be deemed not to be engaged in a distribution of such securities and therefore not to be an underwriter of such securities within the meaning of sections 2(a)(11) and 4(1) of the Act.
- c. *Sales by Dealers.* Any dealer who offers or sells securities in compliance with the conditions set forth in paragraph (d) of this section shall be deemed not to be a participant in a

distribution of such securities within the meaning of section 4(3)(C) of the Act and not to be an underwriter of such securities within the meaning of section 2 (11) of the Act, and such securities shall be deemed not to have been offered to the public within the meaning of section 4(3)(A) of the Act.

- *Conditions to be met.* To qualify for exemption under this section, an offer or sale must meet the following conditions:
  - The securities are offered or sold only to a qualified institutional buyer or to an offeree or purchaser that the seller and any person acting on behalf of the seller reasonably believe is a qualified institutional buyer. In determining whether a prospective purchaser is a qualified institutional buyer, the seller and any person acting on its behalf shall be entitled to rely upon the following non-exclusive methods of establishing the prospective purchaser's ownership and discretionary investments of securities:
    - The prospective purchaser's most recent publicly available financial statements, *Provided* That such statements present the information as of a date within 16 months preceding the date of sale of securities under this section in the case of a U.S. purchaser and within 18 months preceding such date of sale for a foreign purchaser;
    - The most recent publicly available information appearing in documents filed by the prospective purchaser with the Commission or another United States federal, state, or local governmental agency or self-regulatory organization, or with a foreign governmental agency or self-regulatory organization, *Provided* That any such information is as of a date within 16 months preceding the date of sale of securities under this section in the case of a U.S. purchaser and within 18 months preceding such date of sale for a foreign purchaser;
    - The most recent publicly available information appearing in a recognized securities manual, *Provided* That such information is as of a date within 16 months preceding the date of sale of securities under this section in the case of a U.S. purchaser and within 18 months preceding such date of sale for a foreign purchaser; or
    - A certification by the chief financial officer, a person fulfilling an equivalent function, or other executive officer of the purchaser, specifying the amount of securities owned and invested on a discretionary basis by the purchaser as of a specific date on or since the close of the purchaser's most recent fiscal year, or, in the case of a purchaser that is a member of a family of investment companies, a certification by an executive officer of the investment adviser specifying the amount of securities owned by the family of investment companies as of a specific date on or since the close of the purchaser's most recent fiscal year;
  - The seller and any person acting on its behalf takes reasonable steps to ensure that the purchaser is aware that the seller may rely on the exemption from the provisions of section 5 of the Act provided by this section;

- The securities offered or sold:
  - Were not, when issued, of the same class as securities listed on a national securities exchange registered under section 6 of the Exchange Act or quoted in a U.S. automated inter-dealer quotation system; *Provided*, That securities that are convertible or exchangeable into securities so listed or quoted at the time of issuance and that had an effective conversion premium of less than 10 percent, shall be treated as securities of the class into which they are convertible or exchangeable; and that warrants that may be exercised for securities so listed or quoted at the time of issuance, for a period of less than 3 years from the date of issuance, or that had an effective exercise premium of less than 10 percent, shall be treated as securities of the class to be issued upon exercise; and *Provided further*, That the Commission may from time to time, taking into account then-existing market practices, designate additional securities and classes of securities that will not be deemed of the same class as securities listed on a national securities exchange or quoted in a U.S. automated inter-dealer quotation system; and
  - ii. Are not securities of an open-end investment company, unit investment trust or face-amount certificate company that is or is required to be registered under section 8 of the Investment Company Act; and
- - In the case of securities of an issuer that is neither subject to section 13 or 15 (d) of the Exchange Act, nor exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act, nor a foreign government as defined in Rule 405 eligible to register securities under Schedule B of the Act, the holder and a prospective purchaser designated by the holder have the right to obtain from the issuer, upon request of the holder, and the prospective purchaser has received from the issuer, the seller, or a person acting on either of their behalf, at or prior to the time of sale, upon such prospective purchaser's request to the holder or the issuer, the following information (which shall be reasonably current in relation to the date of resale under this section): a very brief statement of the nature of the business of the issuer and the products and services it offers; and the issuer's most recent balance sheet and profit and loss and retained earnings statements, and similar financial statements for such part of the two preceding fiscal years as the issuer has been in operation (the financial statements should be audited to the extent reasonably available).
  - The requirement that the information be *reasonably current* will be presumed to be satisfied if:
    - The balance sheet is as of a date less than 16 months before the date of resale, the statements of profit and loss and retained earnings are for the 12 months preceding the date of such balance sheet, and if such balance sheet is not as of a date less than 6 months before the date of resale, it shall be accompanied by additional statements of profit and loss and retained earnings for the period from the date of such balance sheet to a date less than 6 months before the date of resale; and

- The statement of the nature of the issuer's business and its products and services offered is as of a date within 12 months prior to the date of resale; or
  - With regard to foreign private issuers, the required information meets the timing requirements of the issuer's home country or principal trading markets.
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- Offers and sales of securities pursuant to this section shall be deemed not to affect the availability of any exemption or safe harbor relating to any previous or subsequent offer or sale of such securities by the issuer or any prior or subsequent holder thereof.

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### Regulatory History

55 FR 17945, Apr. 30, 1990, as amended at 57 FR 48722, Oct. 28, 1992

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