

Securities and Exchange Commission

§ 230.251

22, 2009 until Sept. 25, 2009. At 74 FR 47719 and 47724, Sept. 17, 2009, paragraph (e) was amended and the effective date was extended until Nov. 30, 2010.

REGULATION A—CONDITIONAL SMALL ISSUES EXEMPTION

AUTHORITY: Secs. 230.251 to 230.263 issued under 15 U.S.C. 77c, 77s.

SOURCE: 57 FR 36468, Aug. 13, 1992, unless otherwise noted.

§ 230.251 Scope of exemption.

A public offer or sale of securities that meets the following terms and conditions shall be exempt under section 3(b) from the registration requirements of the Securities Act of 1933 (the “Securities Act”):

(a) *Issuer.* The issuer of the securities:

(1) Is an entity organized under the laws of the United States or Canada, or any State, Province, Territory or possession thereof, or the District of Columbia, with its principal place of business in the United States or Canada;

(2) Is not subject to section 13 or 15(d) of the Securities Exchange Act of 1934 (the “Exchange Act”) (15 U.S.C. 78a *et seq.*) immediately before the offering;

(3) Is not a development stage company that either has no specific business plan or purpose, or has indicated that its business plan is to merge with an unidentified company or companies;

(4) Is not an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*);

(5) Is not issuing fractional undivided interests in oil or gas rights as defined in § 230.300, or a similar interest in other mineral rights; and

(6) Is not disqualified because of § 230.262.

(b) *Aggregate offering price.* The sum of all cash and other consideration to be received for the securities (“aggregate offering price”) shall not exceed \$5,000,000, including no more than \$1,500,000 offered by all selling security holders, less the aggregate offering price for all securities sold within the twelve months before the start of and during the offering of securities in reliance upon Regulation A. No affiliate resales are permitted if the issuer has not had net income from continuing

operations in at least one of its last two fiscal years.

NOTE: Where a mixture of cash and non-cash consideration is to be received, the aggregate offering price shall be based on the price at which the securities are offered for cash. Any portion of the aggregate offering price attributable to cash received in a foreign currency shall be translated into United States currency at a currency exchange rate in effect on or at a reasonable time prior to the date of the sale of the securities. If securities are not offered for cash, the aggregate offering price shall be based on the value of the consideration as established by bona fide sales of that consideration made within a reasonable time, or, in the absence of sales, on the fair value as determined by an accepted standard. Valuations of non-cash consideration must be reasonable at the time made.

(c) *Integration with other offerings.* Offers and sales made in reliance on this Regulation A will not be integrated with:

(1) Prior offers or sales of securities; or

(2) Subsequent offers or sales of securities that are:

(i) Registered under the Securities Act, except as provided in § 230.254(d);

(ii) Made in reliance on § 230.701;

(iii) Made pursuant to an employee benefit plan;

(iv) Made in reliance on Regulation S (§ 230.901-904); or

(v) Made more than six months after the completion of the Regulation A offering.

NOTE: If the issuer offers or sells securities for which the safe harbor rules are unavailable, such offers and sales still may not be integrated with the Regulation A offering, depending on the particular facts and circumstances. See Securities Act Release No. 4552 (November 6, 1962) [27 FR 11316].

(d) *Offering conditions—(1) Offers.* (i) Except as allowed by § 230.254, no offer of securities shall be made unless a Form 1-A offering statement has been filed with the Commission.

(ii) After the Form 1-A offering statement has been filed:

(A) Oral offers may be made;

(B) Written offers under § 230.255 may be made;

(C) Printed advertisements may be published or radio or television broadcasts made, if they state from whom a Preliminary Offering Circular or Final

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Offering Circular may be obtained, and contain no more than the following information:

(1) The name of the issuer of the security;

(2) The title of the security, the amount being offered and the per unit offering price to the public;

(3) The general type of the issuer's business; and

(4) A brief statement as to the general character and location of its property.

(iii) After the Form 1-A offering statement has been qualified, other written offers may be made, but only if accompanied with or preceded by a Final Offering Circular.

(2) *Sales.* (i) No sale of securities shall be made until:

(A) The Form 1-A offering statement has been qualified;

(B) A Preliminary Offering Circular or Final Offering Circular is furnished to the prospective purchaser at least 48 hours prior to the mailing of the confirmation of sale to that person; and

(C) A Final Offering Circular is delivered to the purchaser with the confirmation of sale, unless it has been delivered to that person at an earlier time.

(ii) Sales by a dealer (including an underwriter no longer acting in that capacity for the security involved in such transaction) that take place within 90 days after the qualification of the Regulation A offering statement may be made only if the dealer delivers a copy of the current offering circular to the purchaser before or with the confirmation of sale. The issuer or underwriter of the offering shall provide requesting dealers with reasonable quantities of the offering circular for this purpose.

(3) *Continuous or delayed offerings.* Continuous or delayed offerings may be made under this Regulation A if permitted by § 230.415.

§ 230.252 Offering statement.

(a) *Documents to be included.* The offering statement consists of the facing sheet of Form 1-A [§ 239.90 of this chapter], the contents required by the form and any other material information necessary to make the required statements, in the light of the cir-

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cumstances under which they are made, not misleading.

(b) *Paper, printing, language and pagination.* The requirements for offering statements are the same as those specified in § 230.403 for registration statements under the Act.

(c) *Confidential treatment.* A request for confidential treatment may be made under § 230.406 for information required to be filed, and § 200.83 of this chapter for information not required to be filed.

(d) *Signatures.* The issuer, its Chief Executive Officer, Chief Financial Officer, a majority of the members of its board of directors or other governing body, and each selling security holder shall sign the offering statement. If a signature is by a person on behalf of any other person, evidence of authority to sign shall be filed, except where an executive officer signs for the issuer. If the issuer is Canadian, its authorized representative in the United States shall sign. If the issuer is a limited partnership, a majority of the board of directors of any corporate general partner also shall sign.

(e) *Number of copies and where to file.* Seven copies of the offering statement, at least one of which is manually signed, shall be filed with the Commission's main office in Washington, DC.

(f) [Reserved]

(g) *Qualification.* (1) If there is no delaying notation as permitted by paragraph (g)(2) of this section or suspension proceeding under § 230.258, an offering statement is qualified without Commission action on the 20th calendar day after its filing.

(2) An offering statement containing the following notation can be qualified only by order of the Commission, unless such notation is removed prior to Commission action as described in paragraph (g)(3) of this section:

This offering statement shall only be qualified upon order of the Commission, unless a subsequent amendment is filed indicating the intention to become qualified by operation of the terms of Regulation A.

(3) The delaying notation specified in paragraph (g)(2) of this section can be removed only by an amendment to the offering statement that contains the following language: