

Securities and Exchange Commission

§ 227.503

X and § 227.404(a) and (b) require the same records or reports to be preserved for different periods of time, such records or reports shall be preserved for the longer period of time.

Subpart E—Miscellaneous Provisions

§ 227.501 Restrictions on resales.

(a) Securities issued in a transaction exempt from registration pursuant to section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) and in accordance with section 4A of the Securities Act (15 U.S.C. 77d-1) and this part may not be transferred by any purchaser of such securities during the one-year period beginning when the securities were issued in a transaction exempt from registration pursuant to section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)), unless such securities are transferred:

- (1) To the issuer of the securities;
- (2) To an accredited investor;
- (3) As part of an offering registered with the Commission; or
- (4) To a member of the family of the purchaser or the equivalent, to a trust controlled by the purchaser, to a trust created for the benefit of a member of the family of the purchaser or the equivalent, or in connection with the death or divorce of the purchaser or other similar circumstance.

(b) For purposes of this § 227.501, the term *accredited investor* shall mean any person who comes within any of the categories set forth in § 230.501(a) of this chapter, or who the seller reasonably believes comes within any of such categories, at the time of the sale of the securities to that person.

(c) For purposes of this section, the term *member of the family of the purchaser or the equivalent* includes a child, stepchild, grandchild, parent, step-parent, grandparent, spouse or spousal equivalent, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of the purchaser, and shall include adoptive relationships. For purposes of this paragraph (c), the term *spousal equivalent* means a cohabitant occupying a relationship generally equivalent to that of a spouse.

§ 227.502 Insignificant deviations from a term, condition or requirement of this part (Regulation Crowdfunding).

(a) A failure to comply with a term, condition, or requirement of this part will not result in the loss of the exemption from the requirements of Section 5 of the Securities Act (15 U.S.C. 77e) for any offer or sale to a particular individual or entity, if the issuer relying on the exemption shows:

(1) The failure to comply was insignificant with respect to the offering as a whole;

(2) The issuer made a good faith and reasonable attempt to comply with all applicable terms, conditions and requirements of this part; and

(3) The issuer did not know of such failure where the failure to comply with a term, condition or requirement of this part was the result of the failure of the intermediary to comply with the requirements of section 4A(a) of the Securities Act (15 U.S.C. 77d-1(a)) and the related rules, or such failure by the intermediary occurred solely in offerings other than the issuer's offering.

(b) Paragraph (a) of this section shall not preclude the Commission from bringing an enforcement action seeking any appropriate relief for an issuer's failure to comply with all applicable terms, conditions and requirements of this part.

§ 227.503 Disqualification provisions.

(a) *Disqualification events.* No exemption under section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) shall be available for a sale of securities if the issuer; any predecessor of the issuer; any affiliated issuer; any director, officer, general partner or managing member of the issuer; any beneficial owner of 20 percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power; any promoter connected with the issuer in any capacity at the time of filing, any offer after filing, or such sale; any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with such sale of securities; or any general partner, director, officer or managing member of any such solicitor:

(1) Has been convicted, within 10 years before the filing of the offering statement or such sale (or five years, in the case of issuers, their predecessors and affiliated issuers), of any felony or misdemeanor:

(i) In connection with the purchase or sale of any security;

(ii) Involving the making of any false filing with the Commission; or

(iii) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, funding portal or paid solicitor of purchasers of securities;

(2) Is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years before the filing of the information required by section 4A(b) of the Securities Act (15 U.S.C. 77d-1(b)) or such sale that, at the time of such filing or sale, restrains or enjoins such person from engaging or continuing to engage in any conduct or practice:

(i) In connection with the purchase or sale of any security;

(ii) Involving the making of any false filing with the Commission; or

(iii) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, funding portal or paid solicitor of purchasers of securities;

(3) Is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions); a State authority that supervises or examines banks, savings associations or credit unions; a State insurance commission (or an agency or officer of a state performing like functions); an appropriate Federal banking agency; the U.S. Commodity Futures Trading Commission; or the National Credit Union Administration that:

(i) At the time of the filing of the information required by section 4A(b) of the Securities Act (15 U.S.C. 77d-1(b)) or such sale, bars the person from:

(A) Association with an entity regulated by such commission, authority, agency or officer;

(B) Engaging in the business of securities, insurance or banking; or

(C) Engaging in savings association or credit union activities; or

(ii) Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative or deceptive conduct entered within ten years before such filing of the offering statement or such sale;

(iii) *Instruction to paragraph (a)(3)*. *Final order* shall mean a written directive or declaratory statement issued by a Federal or State agency, described in this paragraph (a)(3), under applicable statutory authority that provides for notice and an opportunity for hearing, which constitutes a final disposition or action by that Federal or State agency.

(4) Is subject to an order of the Commission entered pursuant to section 15(b) or 15B(c) of the Exchange Act (15 U.S.C. 78o(b) or 78o-4(c)) or section 203(e) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(e) or (f)) that, at the time of the filing of the information required by section 4A(b) of the Securities Act (15 U.S.C. 77d-1(b)) or such sale:

(i) Suspends or revokes such person's registration as a broker, dealer, municipal securities dealer, investment adviser or funding portal;

(ii) Places limitations on the activities, functions or operations of such person; or

(iii) Bars such person from being associated with any entity or from participating in the offering of any penny stock;

(5) Is subject to any order of the Commission entered within five years before the filing of the information required by section 4A(b) of the Securities Act (15 U.S.C. 77d-1(b)) or such sale that, at the time of such filing or sale, orders the person to cease and desist from committing or causing a violation or future violation of:

(i) Any scienter-based anti-fraud provision of the Federal securities laws, including without limitation section 17(a)(1) of the Securities Act (15 U.S.C. 77q(a)(1)), section 10(b) of the Exchange Act (15 U.S.C. 78j(b)) and 17 CFR 240.10b-5, section 15(c)(1) of the Exchange Act (15 U.S.C. 78o(c)(1)) and section 206(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-6(1)) or any other rule or regulation thereunder; or

(ii) Section 5 of the Securities Act (15 U.S.C. 77e);

(6) Is suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade;

(7) Has filed (as a registrant or issuer), or was or was named as an underwriter in, any registration statement or Regulation A (17 CFR 230.251 through 230.263) offering statement filed with the Commission that, within five years before the filing of the information required by section 4A(b) of the Securities Act (15 U.S.C. 77d-1(b)) or such sale, was the subject of a refusal order, stop order, or order suspending the Regulation A exemption, or is, at the time of such filing or sale, the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued; or

(8) Is subject to a United States Postal Service false representation order entered within five years before the filing of the information required by section 4A(b) of the Securities Act (15 U.S.C. 77d-1(b)) or such sale, or is, at the time of such filing or sale, subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations.

Instruction to paragraph (a): With respect to any beneficial owner of 20 percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power, the issuer is required to determine whether a disqualifying event has occurred only as of the time of filing of the offering statement and not from the time of such sale.

(b) *Transition, waivers, reasonable care exception.* Paragraph (a) of this section shall not apply:

(1) With respect to any conviction, order, judgment, decree, suspension, expulsion or bar that occurred or was issued before May 16, 2016;

(2) Upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission

determines that it is not necessary under the circumstances that an exemption be denied;

(3) If, before the filing of the information required by section 4A(b) of the Securities Act (15 U.S.C. 77d-1(b)) or such sale, the court or regulatory authority that entered the relevant order, judgment or decree advises in writing (whether contained in the relevant judgment, order or decree or separately to the Commission or its staff) that disqualification under paragraph (a) of this section should not arise as a consequence of such order, judgment or decree; or

(4) If the issuer establishes that it did not know and, in the exercise of reasonable care, could not have known that a disqualification existed under paragraph (a) of this section.

Instruction to paragraph (b)(4). An issuer will not be able to establish that it has exercised reasonable care unless it has made, in light of the circumstances, factual inquiry into whether any disqualifications exist. The nature and scope of the factual inquiry will vary based on the facts and circumstances concerning, among other things, the issuer and the other offering participants.

(c) *Affiliated issuers.* For purposes of paragraph (a) of this section, events relating to any affiliated issuer that occurred before the affiliation arose will be not considered disqualifying if the affiliated entity is not:

(1) In control of the issuer; or

(2) Under common control with the issuer by a third party that was in control of the affiliated entity at the time of such events.

(d) *Intermediaries.* A person that is subject to a statutory disqualification as defined in section 3(a)(39) of the Exchange Act (15 U.S.C. 78c(a)(39)) may not act as, or be an associated person of, an intermediary in a transaction involving the offer or sale of securities in reliance on section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) unless so permitted pursuant to Commission rule or order.

Instruction to paragraph (d). § 240.17f-2 of this chapter generally requires the fingerprinting of every person who is a partner, director, officer or employee

§ 227.504

of a broker, subject to certain exceptions.

[80 FR 71537, Nov. 16, 2015, as amended at 86 FR 3592, Jan. 14, 2021]

§ 227.504 Definition of “qualified purchaser”.

For purposes of section 18(b)(3) of the Securities Act [15 U.S.C. 77r(b)(3)], a “qualified purchaser” means any person to whom securities are offered or sold pursuant to an offering under §§ 227.100 through 227.504 (Regulation Crowdfunding).

[86 FR 3593, Jan. 14, 2021]

PART 228 [RESERVED]

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

Subpart 229.1—General

Sec.

229.10 (Item 10) General.

Subpart 229.100—Business

229.101 (Item 101) Description of business.
229.102 (Item 102) Description of property.
229.103 (Item 103) Legal proceedings.
229.104 (Item 104) Mine safety disclosure.
229.105 (Item 105) Risk factors.

Subpart 229.200—Securities of the Registrant

229.201 (Item 201) Market price of and dividends on the registrant’s common equity and related stockholder matters.
229.202 (Item 202) Description of registrant’s securities.

Subpart 229.300—Financial Information

229.301 [Reserved]
229.302 (Item 302) Supplementary financial information.
229.303 (Item 303) Management’s discussion and analysis of financial condition and results of operations.
229.304 (Item 304) Changes in and disagreements with accountants on accounting and financial disclosure.
229.305 (Item 305) Quantitative and qualitative disclosures about market risk.
229.306 [Reserved]

17 CFR Ch. II (4–1–22 Edition)

229.307 (Item 307) Disclosure controls and procedures.

229.308 (Item 308) Internal control over financial reporting.

Subpart 229.400—Management and Certain Security Holders

229.401 (Item 401) Directors, executive officers, promoters and control persons.

229.402 (Item 402) Executive compensation.

229.403 (Item 403) Security ownership of certain beneficial owners and management.

229.404 (Item 404) Transactions with related persons, promoters and certain control persons.

229.405 (Item 405) Compliance with section 16(a) of the Exchange Act.

229.406 (Item 406) Code of ethics.

229.407 (Item 407) Corporate governance

Subpart 229.500—Registration Statement and Prospectus Provisions

229.501 (Item 501) Forepart of registration statement and outside front cover page of prospectus.

229.502 (Item 502) Inside front and outside back cover pages of prospectus.

229.503 (Item 503) Prospectus summary.

229.504 (Item 504) Use of proceeds.

229.505 (Item 505) Determination of offering price.

229.506 (Item 506) Dilution.

229.507 (Item 507) Selling security holders.

229.508 (Item 508) Plan of distribution.

229.509 (Item 509) Interests of named experts and counsel.

229.510 (Item 510) Disclosure of Commission position on indemnification for Securities Act liabilities.

229.511 (Item 511) Other expenses of issuance and distribution.

229.512 (Item 512) Undertakings.

Subpart 229.600—Exhibits

229.601 (Item 601) Exhibits.

Subpart 229.700—Miscellaneous

229.701 (Item 701) Recent sales of unregistered securities; use of proceeds from registered securities.

229.702 (Item 702) Indemnification of directors and officers.

229.703 Purchases of equity securities by the issuer and affiliated purchasers.

Subpart 229.800—List of Industry Guides

229.801 Securities Act industry guides.

229.802 Exchange Act industry guides.

Subpart 229.900—Roll-Up Transactions

229.901 (Item 901) Definitions.