

(A) The dollar value (cash and non-cash) of any annual retainer fees for service on the Board and any Board Committees, including any premium for chairing a committee (column (b));

(B) The aggregate dollar value (cash and non-cash) of any fees for attendance at Board and Committee meetings, including any premium for chairing a committee (column (c)); and

(C) The aggregate dollar value (cash and non-cash) of any consulting fees paid or provided to the director pursuant to a consulting contract entered into in consideration of the director's service on the board, as well as any special assignment fees and any other non-stock compensation paid or provided to the director in consideration of the director's service on the board; and

Instructions to Item 402(g)(2)(ii)

1. Amounts deferred at the election of a director, whether pursuant to a plan established under Section 401(k) of the Internal Revenue Code [26 U.S.C. 401(k)], or otherwise, shall be included in columns (b), (c), or (d) as appropriate. The fact that the amounts have been deferred may be explained in a note to the table.

2. For any form of non-cash compensation, disclose the fair market value at the time the compensation is provided.

3. In lieu of stating the dollar value of any annual retainer fee (column (b)), or aggregate dollar value of any meeting fees (column (c)), actually paid or provided to each director for services during the last completed fiscal year, the standard compensatory arrangement for each individual director receiving the registrant's standard fees may be described. For example, if Director A received a registrant's standard annual retainer fee of \$10,000 and standard meeting fees of \$1000 per board meeting and \$500 per committee meeting, "\$10,000" would be set forth in column (b) and "\$1000 per board meeting and \$500 per committee meeting" would be set forth in column (c). If Director B received the registrant's standard annual retainer fee of \$10,000 plus a \$5000 standard premium for serving as a committee chairperson, "\$15,000" would be set forth in column (b). If Director C received non-standard retainer and/or meeting fees, the actual amount of the fees paid or provided to Director C would have to be set forth in columns (b) and/or (c).

(iii) Any grant of securities to the director for any service provided as a director, including:

(A) the number of any shares granted (column (e)); and

(B) the number of securities underlying any stock options or SARs granted (column (f)).

Instruction to Items 402(g)(2) (ii) and (iii)

The material terms of any non-standard arrangements, including consulting contracts, pursuant to which any of the directors named in the table was compensated for any service provided as a director during the registrant's

last completed fiscal year shall be provided in a note to the table or in narrative following the table.

(3) Describe the material terms of any arrangements, standard or otherwise, pursuant to which any director of the registrant was compensated for services during the last fiscal year for services as a director, that are not required to be disclosed in the table required by paragraphs (g)(1) and (2) of this Item. Such arrangements include, e.g., retirement and pension benefits, insurance benefits, death benefits to the director's heirs, legacy and other charitable award program benefits. With respect to each arrangement described, state the name of the director that received compensation pursuant to the arrangement and state any amount paid during the last completed fiscal year.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, and 80b-11, unless otherwise noted.

6. By amending § 240.14a-101 by designating the existing Instruction to Item 8 as Instruction 1 and adding Instruction 2 to read as follows:

§ 240.14a-101 Schedule 14A. Information required in proxy statement.

Item 8. Compensation of directors and executive officers.

Instructions.

2. If action is to be taken with regard to Item 8(a), but not with regard to Item 8(b), (c) or (d), only the disclosure specified by Item 402(a)(8) of Regulation S-K (§ 229.402(a)(8) of this chapter) (or, if applicable, Item 402(a)(7) of Regulation S-B (§ 228.402(a)(7) of this chapter)) need be provided in response to this Item.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

7. The authority for Part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a, et seq., unless otherwise noted.

8. By amending Form 10-K (referenced in § 249.310) by adding a sentence at the end of Item 11 read as follows:

Note—The text of Form 10-K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10-K

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Item 11. Executive Compensation. \* \* \* If the registrant's definitive proxy or information statement is incorporated by reference pursuant to General Instruction G.3, and does not include all of the information required by Item 402 of Regulation S-K (§ 229.402 of this chapter), as permitted by Item 402(a)(8) of Regulation S-K, then the remaining Item 402 information shall be included in the annual report on Form 10-K.

9. By amending Form 10-KSB (referenced in § 249.310b) by adding a sentence at the end of Item 10 to read as follows:

Note—The text of Form 10-KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10-KSB

Item 10. Executive Compensation. \* \* \* If the small business issuer's definitive proxy or information statement is incorporated by reference pursuant to General Instruction E.3, and does not include all of the information required by Item 402 of Regulation S-B (§ 228.402 of this chapter), as permitted by Item 402(a)(7) of Regulation S-B, then the remaining Item 402 information shall be included in the annual report on Form 10-KSB.

Dated: June 27, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-16386 Filed 7-7-95; 8:45 am]

BILLING CODE 8010-01-P

17 CFR Part 230

[Release No. 33-7185; File No. S7-15-95]

RIN 3235-AG51

Exemption for Certain California Limited Issues

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: In order to reduce regulatory burdens associated with certain offers and sales of securities, the Commission today is proposing a new exemption from its registration requirements for limited offerings of up to \$5 million that are exempt from qualification under recently enacted California state securities law. In addition, public comment is solicited on whether the prohibition against general solicitation in certain Regulation D offerings should be reconsidered.

**DATES:** Comments should be submitted to the Commission on or before September 8, 1995.

**ADDRESSES:** All comments concerning the proposed rules should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, Mail Stop 6-9, 450 Fifth Street, N.W., Washington D.C. 20549 and should refer to File Number S7-15-95. Comment letters will be available for inspection and copying in the Commission's public reference room at the same address.

**FOR FURTHER INFORMATION CONTACT:** Richard K. Wulff, Office of Small Business Policy, Division of Corporation Finance, at (202) 942-2950 or James R. Budge, Office of Disclosure Policy, Division of Corporation Finance, at (202) 942-2910.

**SUPPLEMENTARY INFORMATION:** The Commission today is proposing a new Rule 1001<sup>1</sup> under Section 3(b)<sup>2</sup> of the Securities Act of 1933 (the "Securities Act").<sup>3</sup> The new rule would exempt from the registration requirements of the Securities Act offers and sales up to \$5 million that are exempt from state qualification under paragraph (n) of Section 25102 of the California Corporations Code.<sup>4</sup> Rule 144<sup>5</sup> also would be amended to include securities issued in reliance upon Rule 1001 in the definition of "restricted securities."

## I. Introduction

Since the inception of the Securities Act, Congress has delegated to the Commission the authority to exempt small issues from Securities Act registration provisions when such action is consistent with the public interest and the protection of investors. Soon after its creation, the Commission exercised this authority to provide an exemption for small offerings,<sup>6</sup> and since then, has adopted other rules from time to time, including exemptive rules under Section 3(b), to assist small businesses' capital raising ability, where consistent with investor protection.<sup>7</sup>

Today's proposal would provide a federal exemption for offerings of up to \$5 million<sup>8</sup> that meet the qualifications of a new California exemption designed

to assist small business capital formation.<sup>9</sup> The new California law provides an exemption from state law registration for offerings made to specified classes of qualified purchasers that are similar, but not the same as, accredited investors under Regulation D. Unlike Regulation D, various methods of general solicitations are permitted under the California law. The Commission believes that the California exemption facilitates small business capital raising with adequate protections to investors and therefore proposes to exercise its exemptive authority in Section 3(b) to provide a parallel federal exemption.

## II. The California Exemption

On September 26, 1994, a new exemption from the issuer transactions qualification provisions of the California Corporations Code became effective.<sup>10</sup> The provision was specifically designed "to facilitate the ability of small companies to raise capital to finance their growth."<sup>11</sup>

The exemption generally is limited to issuers that are California corporations or any other form of business entity organized in that state, including partnerships and trusts. In addition, non-California organized businesses may use the exemption if they can attribute more than 50 percent of property, payroll and sales to California and if more than 50 percent of outstanding voting securities of the issuer are held of record by persons having addresses in California. It is not available for offerings relating to a rollup transaction, nor may it be used by "blind pool" issuers or investment companies subject to the Investment Company Act of 1940 (the "Investment Company Act").<sup>12</sup>

Sales under the exemption must be effected only to qualified purchasers who buy for investment purposes and not for redistribution. A qualified purchaser is defined as:

- Designated professional or institutional purchasers or persons affiliated with the issuer;<sup>13</sup>
- Certain relatives residing with qualified purchasers;
- Promoters;
- Any person purchasing more than \$150,000 of securities in the offering;<sup>14</sup>
- Entities whose equity owners are limited to officers, directors and any affiliate of the issuer;
- Reporting companies under the Securities Exchange Act of 1934 (the "Exchange Act"),<sup>15</sup> if the transaction involves the acquisition of all of an issuer's capital stock for investment;
- A natural person whose net worth exceeds \$500,000, or a natural person whose net worth exceeds \$250,000 if such purchaser's annual income exceeds \$100,000—in either case the transaction must involve
  - (a) only a one-class voting stock (or preferred establishing the same voting rights),
  - (b) an amount limited to no more than 10 percent of the purchaser's net worth, and
  - (c) a purchaser able to protect his or her own interests (alone or with the help of a professional advisor);<sup>16</sup>
- Pension and profit sharing trusts, as well as 401(k) plans<sup>17</sup> and Individual

<sup>13</sup> Officers and directors of corporate issuers (or persons performing similar duties), general partners and trustees where the issuer is a partnership or a trust, small business investment companies, business development companies subject to the Investment Company Act, private venture capital companies exempted from the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 *et seq.*], certain natural persons, entities comprised of accredited investors, banks, savings and loan associations, insurance companies, Investment Company Act companies, non-issuer pension or profit-sharing trusts, organizations described in Section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)], business entities (corporations, business trusts or partnerships) with assets of more than \$5 million. All these persons would qualify as "accredited investors" under Rule 501(a) [17 CFR 230.501(a)].

<sup>14</sup> Under the California provision, \$150,000 purchasers and natural persons meeting a \$1 million net worth or \$250,000 annual income test must also satisfy one of the following additional suitability standards: (1) they must have, alone or with the assistance of a professional advisor, the capacity to protect their own interests; (2) they must have the ability to bear the economic risk of the investment; or (3) the investment must not exceed 10 percent of the person's net worth.

<sup>15</sup> 15 U.S.C. 78a *et seq.*

<sup>16</sup> This provision states that each such natural person, by reason of his or her business or financial experience, or the business or financial experience of his or her professional advisor (who is unaffiliated with and who is not compensated, directly or indirectly, by the issuer), can be reasonably assumed to have the capacity to protect his or her interests in connection with the transaction. The California Department of Corporations has indicated that qualified investors under this rubric must have business or financial experience or rely on a professional advisor. Release No. 94-C (September 27, 1994).

<sup>17</sup> 26 U.S.C. 401(k).

<sup>1</sup> The proposed rule would be added as Regulation CA, 17 CFR 230.1001.

<sup>2</sup> 15 U.S.C. 77c(b).

<sup>3</sup> 15 U.S.C. 77a *et seq.*

<sup>4</sup> Cal. Corporations Code § 25102(n).

<sup>5</sup> 17 CFR 230.144.

<sup>6</sup> See Release Nos. 33-158, 159 (April 27, 1934).

<sup>7</sup> See, e.g., Regulation A [17 CFR 230.251-230.263] and Rule 504 [17 CFR 230.504] in Regulation D [17 CFR 230.501-230.508].

<sup>8</sup> This is the maximum dollar amount permitted under the Commission's Section 3(b) exemptive authority.

<sup>9</sup> The Commission has established the Advisory Committee on the Capital Formation and Regulatory Processes ("the Advisory Committee"), chaired by Commissioner Steven M.H. Wallman. The Advisory Committee is considering fundamental issues relating to the regulatory framework governing the capital formation process, including whether the current system of registering securities offerings should be replaced with a company registration system. The Advisory Committee may make recommendations that, if endorsed by the Commission, may result in rule proposals or legislative recommendations that could address the matters discussed in this release.

<sup>10</sup> Chapter 828, Statutes of 1994 (Senate Bill 1951—Killea), adding subdivision (n) to Corporations Code Section 25102.

<sup>11</sup> Section 3, Senate Bill 1951.

<sup>12</sup> 15 U.S.C. 80a-1 *et seq.*

Retirement Accounts of individual qualified purchasers.

Issuers must provide certain purchasers who are natural persons<sup>18</sup> a disclosure document as specified in Rule 502 of Regulation D<sup>19</sup> five days prior to any sale or commitment to purchase.

Offers, oral or written, are generally limited to qualified purchasers. However, the law does permit general announcements of a proposed offering to be widely published and circulated, so long as they contain only specified information.<sup>20</sup> This general announcement process is modeled on the "test the waters" concept being used by several of the states<sup>21</sup> and by the Commission in connection with Regulation A.

A notice must be filed with the California Corporations Commissioner at the initial offer of securities or with the publication of a general announcement of proposed offering, whichever comes first, accompanied by a \$600 filing fee. A second filing is required within 10 business days after the close or abandonment of the offering, and in no case later than 210 days after the filing of the initial notice.

Because the new California exemption combines a form of general solicitation using a "test the waters" concept with a qualified purchaser concept in part derived from the Uniform Limited Offering Exemption ("ULOE"),<sup>22</sup> it does not fit well within any current federal exemption, other than Rule 504,<sup>23</sup> which is limited to \$1 million, or potentially the intrastate offering exemption.<sup>24</sup> Rules 505 of 506 of Regulation D prohibit general

solicitations; moreover, California's definition of qualified purchasers is broader than Regulation D's. The intrastate offering exemption is available only for those offerings by issuers incorporated and doing business in California.

The Commission does not believe that these differences need to be an impediment to the ability of small businesses to take full advantage of the California exemption. While the qualified purchaser definition differs somewhat from the accredited investor definition for individuals, the California law includes additional suitability standards. Moreover, the general announcement of proposed offering is subject to significant limitation, thereby protecting against abuse of the procedure. The provisions of the California law are consistent with investor protection and the public interest, and therefore warrant the Commission's full exercise of its exemptive authority under Section 3(b).

### III. Proposed Regulation CA and Rule 1001

#### A. The Exemption

Proposed Rule 1001 would provide that offers and sales of securities, in amounts of up to \$5 million, that are exempt from registration under the California securities law pursuant to paragraph (n) of § 25102 of the California Corporations Code are exempt from the registration requirements of Section 5 of the Securities Act, pursuant to Section 3(b) of that Act.<sup>25</sup> The proposal would allow reliance on Rule 1001 by all issuers that qualify for the state exemption.<sup>26</sup> Issuers would look to the state of California for interpretations relating to who qualifies for the exemption, since any person who lawfully relies on the state exemption also could rely on its federal counterpart. Comment is requested as to whether proposed Rule 1001 should include additional eligibility criteria, for example, non-reporting status under the Exchange Act or small business issuer

<sup>25</sup> Proposed Rule 1001(a). While the transactions would not be subject to registration under Section 5, the antifraud provisions of the federal securities laws would continue to be applicable to all exempt transactions. See preliminary note 1 to proposed Rule 1001.

Proposed Rule 1001 would provide an exemption only for the transactions in which the securities are offered or sold by the issuer, not for the securities themselves.

<sup>26</sup> As noted above, California law precludes reliance on the exemption in connection with investment company, blind pool or roll-up offerings; thus, the proposed Rule 1001 exemption also would be unavailable in those cases.

status under federal securities laws, as defined in Securities Act Rule 405.<sup>27</sup>

As proposed, the rule would not require issuers to notify the Commission when they rely on the California exemption in view of the notification provisions of the California law. Comment is solicited as to whether a notice of reliance, similar to that used in connection with Regulation D offerings, should be required.

#### B. Computation of \$5 Million Amount

Proposed Rule 1001 exempts offerings up to \$5 million, the maximum allowed under Section 3(b). The \$5 million limit would apply on an offering by offering basis.<sup>28</sup> This approach differs from that applied in other Section 3(b) rules, where an annual dollar limit for the aggregate of various Section 3(b) offers has been used.<sup>29</sup> Rule 1001's offering by offering approach is proposed to more closely parallel the California exemptive provision. Comment is requested as to whether the proposed approach is appropriate, or whether the more traditional Section 3(b) annual aggregated offering approach should be used. If commenters prefer that the amount allowed be reduced by other Section 3(b) offerings in the previous 12-month period, which offerings should reduce the amount?<sup>30</sup>

#### C. Resale Limitations

The proposed exemption would provide that purchasers in the exempt transaction receive "restricted securities."<sup>31</sup> Consequently, purchasers would have to either register subsequent resales of the securities or have an exemption for such sales. Categorizing the securities offered and sold pursuant to the proposed exemption as "restricted" is consistent with the California exemption, since it requires an investment intent on the part of purchasers in the offering, and such shares could not be resold under California law without qualification or some other exemption under such law. In addition, the treatment is consistent with other federal exemptions, the availability of which depends on the

<sup>27</sup> 17 CFR 230.405.

<sup>28</sup> Standard integration analysis concepts would apply. See Release No. 33-4552 (November 7, 1962) [27 FR 11316].

<sup>29</sup> See, e.g., Rule 251(b) [17 CFR 230.251(b)], Rule 504(b)(2) [17 CFR 230.504(b)(2)] and Rule 505(b)(2)(i) [17 CFR 230.505(b)(2)(i)].

<sup>30</sup> Where a transaction involves non-cash consideration, the amount of the offering would be calculated as provided under California law.

<sup>31</sup> Proposed Rule 1001(c) and proposed amendment to Rule 144.

<sup>18</sup> This delivery requirement is limited to those natural persons designated as qualified purchasers because their net worth exceeds \$500,000, or whose net worth exceeds \$250,000 where there is an annual income of \$100,000.

<sup>19</sup> See 17 CFR 230.502(b)(2).

<sup>20</sup> The California provision limits the content of the general announcement to the following items: the issuer's identity; the full title of the securities being offered; the suitability standards of prospective investors; a statement that no money is being sought or will be accepted, that an indication of interest involves no commitment to purchase and that under certain circumstances a disclosure document will be provided prior to purchase; and the name, address and telephone number of a person who can provide further information about the offering. Only the following additional information may be included at the issuer's option: a brief description of the business, its geographical location and the offering price or method of determination.

<sup>21</sup> See CCH NASAA Reports ¶ 7036. Colorado, Kansas, Massachusetts, Oklahoma, Oregon, Pennsylvania, Vermont, Virginia and Washington are participating in a pilot program in this regard.

<sup>22</sup> CCH NASAA Reports ¶ 6201.

<sup>23</sup> 17 CFR 230.504.

<sup>24</sup> Securities Act Section 3(a)(11) [15 U.S.C. 77c(a)(11)] and Rule 147 [17 CFR 230.147].

sophistication, wealth or institutional character of the investor.<sup>32</sup>

#### IV. Similar Exemptions Adopted by Other States

While the exemption being proposed today is based on a California statute, the Commission is proposing also to provide the same exemption for each state that enacts a transaction exemption incorporating the same standards used by California.<sup>33</sup> This would be done either at such time as the Commission may determine to adopt Rule 1001, or if a state adopts such exemption later, the Commission will adopt a coordinated exemption upon notification by the state. The Commission requests comment on whether this proposed approach to adopting the Rule 1001 exemption for any state exemptions with the same requirements as the California exemption is appropriate. Where states determine to provide comparable exemptions that vary from the specific details of the California law, the Commission would expect to propose for comment an exemption comparable to that provided in Rule 1001.

#### V. General Solicitation Under Regulation D and ULOE

The California exemption permits broad dissemination of information about a proposed offering—called the “general announcement”—including specific information about the offering, such as the price of the securities to be offered. This ability to reach out to a broad audience to find possible interest, while formally offering and selling only to qualified purchasers that may be found through that process, appears to have the potential to significantly enhance the usefulness of an exemption that limits sales to specified classes of purchasers.

As noted, however, this public dissemination is one of the features of the California exemption that makes it difficult to fit within the Regulation D exemption, since Regulation D prohibits general solicitations, other than under the Rule 504 seed capital rule. Similarly, ULOE, an official policy guideline of the North American Securities Administrators Association, Inc. (“NASAA”)<sup>34</sup> that was adopted in

coordination with the Commission’s adoption of Regulation D, also prohibits general solicitations in these offerings.<sup>35</sup> The inability to reach out broadly to find possible qualified investors for Regulation D exempt offerings hampers the utility of the exemption and may raise the costs to companies of trying to do these exempt offerings; California’s new exemption demonstrates the potential benefits of reexamining the costs and benefits of such prohibition.

Against the backdrop of this new approach in California, the Commission is considering whether amendments to Regulation D should be proposed that would similarly facilitate better use of the exemptions and lower the costs for companies by revising or eliminating the prohibition against general solicitation for Rule 505 and 506 offerings.

Comment is requested on whether the Commission should explore with NASAA the possibility of proposing such a change to Regulation D and ULOE. If NASAA will not follow this approach, would it still be worthwhile for the Commission to implement the change even if there were not significant state uniformity?

If the Commission makes proposals to permit some form of general solicitation in Rule 505 and 506 exempt offerings, a number of approaches could be considered. For example, a limited approach similar to the one adopted in California could be implemented. This allows a written communication to be broadly disseminated, but specifically limits the information allowed to be included. Would this approach be sufficiently helpful in allowing companies to locate potential investors for a private offering, or are the limitations overly restrictive? Other approaches would permit more extensive communications to be disseminated, including more extensive written and oral communications,<sup>36</sup> but could include some limitations, such as on the methods of dissemination or the classes of issuers entitled to use the provision. For example, would dissemination methods that are designed to reach only accredited investors be workable? Should any

District of Columbia, Puerto Rico, Mexico and several of the Canadian provinces.

<sup>35</sup> State statutes and rules based on NASAA’s ULOE exempt offers or sales of securities made in compliance with Rules 501–503, 505 and/or 506 of Regulation D [17 CFR 230.501–230.503, 230.505 and 230.506 respectively], including the prohibition of general solicitations found in Rule 502(c).

<sup>36</sup> See, e.g., Release No. 33–7188, a companion release proposing to permit “test the waters” activity in anticipation of a registered initial public offering, and Rule 254 of Regulation A [17 CFR 230.254].

issuers be entitled to disseminate broadly to locate potential investors, or should this be limited to specific classes of companies, such as only non-reporting issuers, only small business issuers, or only reporting issuers? Are there other approaches that the Commission should consider?

Comment generally is requested on whether the Commission should consider altering the general solicitation prohibition. Given that all purchasers must continue to meet the requirements of Regulation D, and all information required by the regulation must be provided prior to purchase, would the ability to broadly disseminate to locate potential investors compromise investor protection interests?

Finally, the Commission requests comment as to whether the question of general solicitation in Regulation D or other private offerings should be addressed through legislative changes to the Securities Act rather than through Commission rulemaking. For example, should the Commission seek specific authority under the Securities Act to exempt private offerings that include general solicitations, provided that sales are made only to qualified purchasers? More generally, should the Commission recommend general exemptive legislation that would allow it greater flexibility to address these or even broader kinds of issues?

#### VI. General Request for Comment

Any interested persons wishing to submit written comments on the proposed Section 3(b) exemption as explained in this release, or the questions regarding general solicitation, are invited to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comment is requested from the point of view of the public interest, the states, and the companies that would be affected; comments should address any possible effects on investor protection resulting from the proposed exemption. The Commission further requests comment on any competitive burdens that might result from the adoption of the proposals. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 19(a) of the Securities Act<sup>37</sup> and Section 23 of the Exchange Act.<sup>38</sup> Comment letters should refer to File Number S7–15–95. All comments received will be available for public inspection and copying in the

<sup>37</sup> 15 U.S.C. 77s(a).

<sup>38</sup> 15 U.S.C. 78w(a).

<sup>32</sup> See, e.g., Section 4(6) of the Exchange Act [15 U.S.C. 78d(6)], Securities Act Rule 506 [17 CFR 230.506], and Securities Act Rule 701 [17 CFR 230.701].

<sup>33</sup> Several states currently are considering enacting exemptions comparable to the California law, but the Commission is unaware of any that have been adopted as of the date of this release.

<sup>34</sup> NASAA is an association of securities commissioners from each of the 50 states, the

Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

**VII. Cost-Benefit Analysis**

To assist the Commission in its evaluation of the costs and benefits that may result from the proposed exemption discussed in this release, commenters are requested to provide views and data relating to any costs and benefits associated with these proposals. It is expected that compliance burdens will decrease with respect to issuers who qualify for the proposed exemption, inasmuch as they would be able to raise up to \$5 million in capital without the burden and expense of compliance with the registration and reporting requirements of the federal securities laws.

**VIII. Summary of Initial Regulatory Flexibility Analysis**

An initial regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 603 concerning the proposed Rule 1001 exemption and the proposed amendment to Rule 144. The analysis notes that the purpose of the proposals is to relieve small businesses of federal registration requirements where the transaction is exempt from qualification under paragraph (n) of Section 25102 of the California Corporations Code.

As discussed more fully in the analysis, the changes would affect persons that are small entities, as defined by the Commission's rules. It is anticipated that small businesses that qualify for the proposed exemption would experience a reduction in reporting, recordkeeping and compliance burdens. The analysis also indicates that there are no current rules that duplicate, overlap or conflict with the proposed exemption.

As stated in the analysis, several possible significant alternatives to the proposals were considered, including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposals. The Commission believes that there is no need for special small business alternatives, since the purpose of the proposed rulemaking is to reduce burdens for small business. The fact that larger entities also could take advantage of the rule should not detract from that purpose.

Written comments are encouraged with respect to any aspect of the analysis. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposals are adopted. A copy of the

analysis may be obtained by contacting James R. Budge, Office of Disclosure Policy, Division of Corporation Finance, at (202) 942-2910, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

**IX. Statutory Basis for the Proposal**

Regulation CA, Rule 1001 and the amendment to Rule 144 are proposed pursuant to Sections 3(b) and 19 of the Securities Act.

**List of Subjects in 17 CFR Part 230**

Registration requirements, Securities.

**Text of the Proposed Exemption**

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

**PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933**

1. The authority citation for Part 230 continues to read in part as follows:

**Authority:** 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78l, 78m, 78n, 78o, 78w, 78ll(d), 79t, 80a-8, 89a-29, 80a-30, and 89a-37, unless otherwise noted.

\* \* \* \* \*

2. By amending § 230.144 by removing the period at the end of paragraph (a)(3)(iv) and adding “; or” in its place and by adding paragraph (a)(3)(v), to read as follows:

**§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.**

\* \* \* \* \*

(a) \* \* \*

(3) \* \* \*

(v) Securities acquired from the issuer that are subject to the resale limitations of Regulation CA (§ 230.1001).

\* \* \* \* \*

3. By adding a new undesignated center heading and § 230.1001, to read as follows:

**Regulation CA—Exemption for Certain Issues of Securities Exempt Under State Law**

**§ 230.1001 Exemption for transactions exempt from qualification under § 25102(n) of the California Corporations Code.**

**Preliminary Notes:** (1) Nothing in this section is intended to be or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors necessary to satisfy the antifraud provisions of the federal securities laws. This section only provides an exemption from the registration requirements of the Securities Act of 1933 (“the Act”) [15 U.S.C. 77a et seq.].

(2) Nothing in this section obviates the need to comply with any applicable state law relating to the offer and sales of securities.

(3) Attempted compliance with this section does not act as an exclusive election; the issuer also can claim the availability of any other applicable exemption.

(4) This exemption is not available to any issuer for any transaction which, while in technical compliance with the provision of 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.

(a) *Exemption.* Offers and sales of securities that satisfy the conditions of paragraph (n) of § 25102 of the California Corporations Code, and paragraph (b) of this section, shall be exempt from the provisions of Section 5 of the Securities Act of 1933 by virtue of Section 3(b) of that Act.

(b) *Limitation on and computation of offering price.* The sum of all cash and other consideration to be received for the securities shall not exceed \$5,000,000, less the aggregate offering price for all other securities sold in the same offering of securities, whether pursuant to this or another exemption.

(c) *Resale limitations.* Securities issued pursuant to this § 230.1001 are deemed to be “restricted securities” as defined in Securities Act Rule 144 [§ 230.144]. Resales of such securities must be made in compliance with the registration requirements of the Act or an exemption therefrom.

Dated: June 27, 1995.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

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**17 CFR Parts 230, 240, 249 and 260**

[Release Nos. 33-7186; 34-35895; 39-2333; File No. S7-16-95]

RIN Number 3235-AG48

**Relief From Reporting by Small Issuers**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission is publishing proposals designed to reduce burdens on small business by doubling the asset threshold that subjects companies to registration and periodic reporting under the Securities Exchange Act of 1934 (the “Exchange Act”) from \$5 million to \$10 million.

**DATES:** Comments should be submitted to the Commission on or before September 8, 1995.