(5) Are revised estimates a result (all or in part) of changes in program activities?

(c) The Department will notify the State that (1) its application has been approved or (2) its application has been disapproved, together with the reasons for disapproval.

§ 402.45 Amendments to applications.

(a) If, during the course of a fiscal year, a State adds a program or activity for which it intends to claim reimbursement or make payment in that fiscal year, it must submit an amendment (containing appropriate information pursuant to § 402.41(c)) to its approved application for that fiscal year.

(b) A State may use SLIAG funds received for a fiscal year to reimburse or pay SLIAG-related costs for programs or activities described in (a) of this section retroactive to the date the activity began, but no earlier than the first day of the fiscal year and only to the extent described in § 402.10(d). Costs incurred prior to October 1, 1987, are allowable only to the extent described in § 402.12.

Subpart F—Recordkeeping and Reporting

§ 402.50 Recordkeeping.

A State must provide for the maintenance of such records as are necessary:

(a) To meet the requirements of the Act and Department regulations relating to retention of and access to records.

(b) To allow the State to provide to the Department (1) an accurate description of its activities undertaken with SLIAG funds, and (2) a complete record of the purposes for which SLIAG funds were spent, and of the recipients of such funds; and

(c) To allow the Department and auditors of the State to determine the extent to which SLIAG funds were expended consistent with the Act and this regulation.

§ 402.51 Reporting.

(a) After the end of a Federal fiscal year for which it received or during which it obligated or expended SLIAG funds and by the due date indicated below, a State must submit annual reports containing the information indentified in (c) and (e) of this section. The reports are due no later than 90 days after the end of a Federal fiscal year.

(b)(1) Failure to submit the annual report required in (a) of this section by the deadline, without prior written permission from the Secretary, constitutes a basis for withholding of SLIAG funds.

(2) Failure by a State to submit the required information prior to the calculation of allocations pursuant to Subpart D will result in the Secretary's including no SLIAG-related costs for the fiscal year for that State in the calculation of State allocations.

(c) A State's annual report must provide information on the status of each fiscal year's funds, as of September 30, for the fiscal year, including:

(1) Identification of the amount obligated and the amount expended by the State grantee agency;

(2) Identification of any amount remaining unobligated at the end of the fiscal year which the State intends to carry over to succeeding fiscal years; and,

(3) Identification of any amount remaining unobligated at the end of the fiscal year which the State does not desire to carry over to the succeeding fiscal year.

(d) A State must use SF-269 in its reporting under paragraph (c) of this section, but it may determine the format of its annual report content under paragraph (e) of this section.

(e) A State's annual report must also provide the actual SLIAG-related costs incurred during the fiscal year. The report must provide for each program or activity identified in the State's application, the amount of the actual SLIAG-related costs incurred in that program or activity, identified as public assistance, public health assistance, educational services and SLIAG administrative costs, the amount of SLIAG funds obligated for that program or activity, and the time period for which the funds were obligated. The report must contain a description of the methodology used to determine actual SLIAG-related costs, if different from the description provided in the State's application pursuant to § 402.41(d)(2). Federal and State costs of providing assistance under a State plan approved under title XIX of the Social Security Act to aliens whose status has been adjusted under sections 245A and 210A of the INA by virtue of the exceptions to the bar to Medicaid eligibility (sections 245A(h) (2) and (3) of the INA) must be shown separately in States' reports.

PART 16—PROCEDURES OF THE DEPARTMENT GRANT APPEALS BOARD

2. The authority citation for Part 16 continues to read as follows:

Authority: U.S.C. 301 and secs. 1, 5, 6, and 7 of Reorganization Plan No. 1 of 1953, 18 FR 2053, 67 Stat. 631 and authorities cited in the Appendix.

3. Appendix A to Part 16 is amended by adding paragraph B(a)(6) to read as follows:

Appendix A—What Disputes the Board Reviews

B * * *

(a) * * *

(6) Decisions relating to repayment and withholding under State Legalization Impact Assistance Grants as provided in 45 CFR 402.24 and 402.25.

[Editorial Note: The following appendix will not appear in the Code of Federal Regulations]

Appendix A—Initial Fiscal Year 1988 State Allocations [1]

State	Initial fiscal year 1988 allotments	Percent of total
Alabama	$166,699	0.04
Alaska	81,654	0.02
Arizona	9,049,692	1.95
Arkansas	223,124	0.05
California	265,474,263	57.18
Colorado	3,490,505	0.75
Connecticut	605,758	0.13
Delaware	113,208	0.02
District of Columbia	1,213,785	0.26
Florida	30,185,210	6.50
Georgia	1,540,491	0.33
Guam	68,954	0.01
Hawaii	320,837	0.07
Idaho	2,140,670	0.46
Illinois	25,466,533	5.49
Indiana	399,338	0.09
Iowa	166,951	0.04
Kansas	911,540	0.20
Kentucky	99,131	0.02
Louisiana	542,382	0.12
Maine	16,153	0.00
Maryland	1,668,084	0.36
Massachusetts	1,864,367	0.40
Michigan	845,998	0.18
Minnesota	230,185	0.05
Mississippi	93,147	0.02
Missouri	314,232	0.07
Montana	31,919	0.01
Nebraska	313,480	0.07
Nevada	2,402,191	0.52
New Hampshire	50,406	0.01
New Jersey	4,960,772	1.07
New Mexico	4,680,790	1.01
New York	25,352,775	5.46
North Carolina	2,173,803	0.47
North Dakota	8,822	0.00
Ohio	451,151	0.10
Oklahoma	3,104,006	0.67
Oregon	3,882,975	0.84
Pennsylvania	1,238,964	0.27
Puerto Rico	755,788	0.16
Rhode Island	408,571	0.09
South Carolina	432,200	0.09
South Dakota	18,811	0.00
Tennessee	269,203	0.06
Texas	55,089,079	11.87
Utah	1,089,246	0.23
Vermont	23,474	0.01
Virgin Islands	66,283	0.01
Virginia	2,058,791	0.44
Washington	6,955,042	1.50
West Virginia	69,990	0.02
Wisconsin	796,138	0.17
Wyoming	272,436	0.06
Total	464,250,000	100.00

[1] Based on one-half of fiscal year 1988 appropriation.

[FR Doc. 88-5017 Filed 3-9-88; 8:45 am]

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federal register

Thursday
March 10, 1988

Part III

Securities and Exchange Commission

17 CFR Part 230

Regulation D Revisions, and Agency Information Collection Activities Under OMB Review; Rule, Proposed Rule and Notice

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6758; File No S7-1-87]

Regulation D Revisions

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of several amendments to the rules comprising Regulation D which provides for certain exemptions from the registration requirements of the Securities Act of 1933 (the "Securities Act"). The revisions expand the "accredited investor" definition, eliminate the $150,000 purchaser of securities from that definition, increase the total offering amount permitted for certain Rule 504 offerings, and revise general solicitation restrictions under Rule 504 for certain state registered offerings. Disclosure standards for offerings of less than $2 million also have been simplified to parallel more closely requirements applicable to Regulation A offerings. Certain technical revisions have been made to the regulation, as proposed.

EFFECTIVE DATE: April 11, 1988. For offerings commenced but not completed prior to this date, issuers may opt to follow the rules in effect at the date of commencement.

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff or Karen M. O'Brien, (202) 272-2644, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On January 16, 1987, the Commission published for comment [1] certain revisions to Regulation D,[2] the limited offering exemptive provisions from the registration requirements of the Securities Act.[3] The proposals have been adopted substantially as proposed.

The revisions change the definition of accredited investor [4] by including additional institutional investors such as savings and loan associations, credit unions and broker-dealers, certain trusts, partnerships and corporations, permitting a joint as well as an individual income test for accrediting natural persons, and eliminating the $150,000 purchaser of securities. The total offering price for Rule 504 transactions has been increased from $500,000 to $1 million, if at least $500,000 is registered at the state level, and general solicitation now will be permitted under certain circumstances for offerings pursuant to Rule 504 in states which provide no qualifying registration procedure. A new level of disclosure, keyed to Regulation A,[5] but requiring that a certified balance sheet of the issuer be prepared, has been adopted for offerings of less than $2 million. The other technical revisions proposed for comment have been adopted. In a companion release issued today,[6] the Commission is soliciting comment on a number of additional revisions to Regulation D, many of which address issues raised for comment in the Reg. D Release. These new proposals primarily respond to the comments received about adding a substantial or good-faith compliance provision to the regulation, and solicit comment on further changes to the accredited investor category.

I. Amendments to Regulation D

Regulation D provides for three different exemptions from the regulation requirements of the Securities Act. Rule 504 is available for offerings of $500,000 or less by companies not subject to the reporting provisions of the Securities Exchange Act of 1934 ("Exchange Act") [7], but not investment companies as defined in the Investment Company Act of 1940. [8] This rule imposes no limitation on the number of purchasers and in certain cases permits general solicitations of potential purchasers. Rule 505 may be used by any company, except investment companies, for offerings that do not exceed $5 million. Subject to a prohibition of general solicitations, the number of accredited investors that may participate in a Rule 505 offering is unlimited; an additional 35 non-accredited investors, who need not be sophisticated, also may purchase. Rules 504 and 505 are promulgated under section 3(b) of the Securities Act. Rule 506 is the Commission's safe-harbor rule for the "non-public offering" exemption, established by section 4(2) of the Securities Act. This rule is available to any issuer and there is no dollar limit as to the amount of funds which can be raised. However, there may be no general solicitation or advertising and sales can only be made to accredited investors and an additional 35 sophisticated investors.

A. Accredited Investors

The "accredited investor" is a central concept to all of the exemptions provided by Regulation D.[9] The Commission proposed to expand the definition to include virtually all classes of institutional investors. The institutional investor category has been expanded to include savings and loan associations and similar institutions such as credit unions,[10] whether acting for their own accounts or as fiduciaries, and broker-dealers if registered under the Exchange Act and purchasing for their own accounts. As the Commission indicated in the Reg. D Release, there does not appear to be a compelling reason to distinguish these institutions from banks, insurance companies or registered investment companies which are already defined to be accredited. Most of the states in their institutional investor exemptions already exempt securities offerings to these categories of investors.[11]

One of the commenters noted that employee benefit plans within the meaning of Title I of the Employee Retirement Income Security Act of 1974 ("ERISA") which have savings and loan associations as plan fiduciaries were not proposed to be treated the same as

[1] Release No. 33-6683 (January 16, 1987) [52 FR 3015] ("Reg. D Release"). The comment letters received and a summary of the comments (File No. S7-1-87) are available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

[2] 17 CFR 230.501-230.506.

[3] 15 U.S.C. 77a *et seq*

[4] 15 U.S.C. 77b(15); 17 CFR 230.15; 17 CFR 230.501.

[5] 17 CFR 230.251-230.264.

[6] Release No. 33-6759.

[7] 15 U.S.C. 78a *et seq.*

[8] 15 U.S.C. 80a-1 *et seq.*

[9] A uniform definition of "accredited investor" is used for both section 4(6) and Regulation D. Section 2(15) of the Securities Act and Rule 215, 17 CFR 230.215 together provide the same listing of investors as Rule 501(a). Amendments to Rule 215 are made today in order to maintain the consistency.

[10] The Commission's staff interprets the "similar institution" language in section 3(a)(5)(A) of the Securities Act to encompass credit unions whose accounts are insured by the National Credit Union Administration. *See, e.g., In re* Idaho Central Credit Union (January 14, 1977) ("no action" letter from the Division of Corporation Finance). Rather than provide a complete listing in the definition, the Commission has determined to maintain interpretative flexibility through the use of the "similar institution" language.

[11] *See* Uniform Securities Act, Section 402(b)(8). This section exempts any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity. Forty-five or more of the states either use these terms as included in the Uniform Securities Act or specifically include savings and loan associations, credit unions and broker-dealers as institutional investors.

ERISA plans with, for example, banks as such fiduciaries. This omission was not intentional. Consequently, the language of both Rules 215 and 501(a) has been amended to indicate that ERISA plans which have savings and loan associations as plan fiduciaries are accredited investors. The Staff's interpretation [12] that a self-directed employee benefit plan, where investment decisions are solely within the control of an accredited investor, is itself an accredited investor, has been codified.

The proposal to accredit corporations, partnerships and business trusts with total assets in excess of $5 million was generally approved by the commenters. The formation of the entity may not be for the purpose of making the particular investment in question.[13] Since the adoption of the regulation, certain non-profit organizations with total assets in excess of $5 million have been accredited investors; for-profit organizations will now be treated in the same way.

The Commission asked for comments as to the desirability of including officers who, while sophisticated, served no policy-making role for a company within the ranks of accredited investors. A number of commenters felt that the expansion would be desirable. Nonetheless, the Commission has decided not to accredit these officers at this time, since it has not been persuaded that, absent a policy-making function characterizing an executive officer position, employees regardless of their titles meet the standards of access to information and ability to bear the risk which are necessary to achieve the status of accredited investor.

A joint-income test for purposes of accrediting natural persons was proposed at the $300,000 level. Many commenters suggested a lower level for the joint income test along with lowering the existing individual income and net worth tests. Others have expressed their concerns about the appropriateness of the current levels in the income and net worth tests and that such levels may not represent a level of financial wherewithal which equates with an ability to get information about an issuer. In the absence of compelling empirical data establishing the financial sophistication of natural persons with lower incomes and net worth, the Commission has determined to make no further revisions to the natural persons accreditation standards. The joint-income test of $300,000 has been adopted.

Under the new provisions, trusts may be accredited if they have $5 million in total assets and have investment decisions made by a sophisticated person. The proposal to limit the trust's purchase to 10 percent of its total assets has not been adopted because general fiduciary principles and legal investment laws appear to be sufficient safeguards against concentration abuses which might arise. In addition, as proposed, a trust formed solely to make the investment would not be accredited under this provision.

The Commission in the proposing release advised that consideration was being given to eliminating the $150,000 purchaser item set forth in Rule 501(a)(5), given anomalies with the net worth test, and concerns that size of purchase alone, particularly at the $150,000 level, does not assure sophistication or access to information. While some persons previously accredited would no longer be accredited (i.e., individuals with net worths of $750,000 but less than $1 million, and corporations, partnerships, and trusts which do not meet the new standards but have $750,000 in net worth), many of the persons who used the $150,000 purchaser item will now become accredited investors by virtue of the revisions to Rule 501 made today. Therefore, the $150,000 purchaser accreditation standard is rescinded.

B. Rule 504

Both of the proposals relating to Rule 504 have been adopted without change. Thus, the $500,000 ceiling is now increased to $1 million as long as no more than $500,000 worth of securities are offered and sold without registration under states' securities laws.

The modification which broadens the scope of permissible general solicitations in Rule 504 offerings to states which have no registration procedure or one which does not provide for registration and delivery of a disclosure document prior to sale has been adopted. The rule has been modified to make clear that the offering must be made in the state of registration in addition to the state which has no registration procedure, so as to minimize forum shopping. As adopted the rule also is intended to accommodate offerings in large metropolitan areas where the central jurisdiction has no registration process but the surrounding jurisdictions do, *e.g.*, New York and the District of Columbia. Sales in non-qualifying states could not exceed the $500,000 ceiling for purposes of Rule 504.

C. Disqualification Provisions

The Commission solicited comments about imposing disqualifiers in Rule 506 offerings which would be similar to those currently applicable to Rule 505 offerings. The request for comments was in response to a suggestion by representatives of the North American Securities Administration Association, Inc. ("NASAA") [14] who believed that such a provision might assist in getting the uniform limited offering exemption ("ULOE"), an official NASAA policy guideline,[15] adopted by more of the states. The commenters were almost unanimously opposed to the suggestion. No state commented on this issue. While NASAA has not withdrawn its support for this proposal, it is not clear to the Commission that the adoption of this proposal would encourage a significant number of additional states to adopt ULOE.[16] Thus, no change to the current system is being made at this time.

D. Disclosure for Offerings Not in Excess of $2 Million

The Commission asked for and received some comments about the value of a reduced level of disclosure for non-reporting company offerings of a relatively small dollar amount. As stated in the Reg. D Release, when the Commission initially proposed the regulation in 1981 [17] a reduced level of disclosure was set for offerings under $1.5 million, tied to Regulation A disclosure standards but requiring certified financial statements. Because the need for an additional level of disclosure standards was not compelling, measured by the public comments at the time, the Commission did not adopt the proposal. Now, however, it appears that there would be some benefit to another level of disclosure under the regulation as long as investor protection is not being compromised. The comments in response to the Reg. D Release support

[12] *In re* Diane P. Weiss (December 21, 1983) (interpretative letter from the Division of Corporation Finance.)

[13] This amendment, as well as the revision to accredited trusts *infra*, makes no change in the availability of Rule 215(h) or Rule 501(a)(8) which accredit entities, all of whose equity owners are otherwise accredited.

[14] NASAA is an association of securities commissioners from each of the 50 states, the District of Columbia, Puerto Rico and several of the Canadian provinces.

[15] CCH NASAA Rep. § 6201 at 6101. Such a guideline represents endorsement of a principle which NASAA believes has general application. NASAA does not have the power to enact legislation, promulgate regulations or otherwise bind legislatures or administrative agencies.

[16] The Commission understands that a majority of states now apply disqualification provisions to Rule 506 offerings.

[17] Release No. 33-6339 (August 7, 1981) [46 FR 41791].

this position. Therefore, for offerings not in excess of $2 million, the information required in Regulation A offerings will satisfy the requirements of Rule 502(b)(2) if the issuer provides investors with a certified balance sheet, dated within 120 days of the commencement of the offering.

E. Other Revisions

All of the proposed technical revisions have been adopted. These changes included the clarification of the "aggregate offering price" definition in Rule 501(c), the single counting of non-contributory employee benefit plans in Rule 501(e), and keying the disclosure requirements to a $7.5 million level in Rule 502(b). Further, more Commission registration statement forms now are specified as being appropriate to satisfy the disclosure obligations of reporting companies under the regulation. For business combinations, the Commission's specific registration statement form is specified as the appropriate guideline.

II. NASAA Cooperation

In the proposing release, the Commission acknowledged NASAA's cooperation. Because Regulation D provides the framework for ULOE, such cooperation is invaluable to the goal of uniform application of the exemption at both the state and federal levels. The Commission understands that NASAA's State-Federal Coordination Committee and Disclosure Standards Committee will consider the Commission's final adoption today, with a view to recommending parallel changes to ULOE. The cooperation of NASAA in these efforts is appreciated and greater uniformity between the state and federal systems of securities regulation will ultimately be achieved, promoting ever increasingly efficient capital formation processes consistent with the protection of investors.

III. Availability of Final Regulatory Flexibility Analysis

A final Regulatory Flexibility Analysis in accordance with the Regulatory Flexibility Act regarding the revisions to Regulation D has been prepared. A summary of the corresponding Initial Regulatory Flexibility Analysis was included in the proposing release. Members of the public who wish to obtain a copy of the Final Regulatory Flexibility Analysis should contact Twanna Young in the Office of Small Business Policy, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC. 20549.

IV. Cost-Benefit Analysis

No specific data was provided on the Commission's request for costs and benefits of the proposals; yet, it appears that the revisions will work some savings by increasing the classes of accredited investors, raising the Rule 504 ceiling and reducing the level of disclosure requirements for offerings that do not exceed $2 million.

V. Statutory Basis, Text of Amendments and Authority

The amendments to the Commission's rules are being adopted pursuant to sections 2(15), 3(b), 4(2), 4(6), 19(a) and 19(c) of the Securities Act.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, securities.

Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is 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: Sections 230.100 to 230.174 issued under Sec. 19, 48 Stat. 85 as amended; 15 U.S.C. 77s, * * *

2. Section 230.215 is amended by revising paragraphs (a), (c) and (h), removing paragraph (e), redesignating paragraphs (f) and (g) as paragraphs (e) and (f), revising newly redesignated paragraph (f), and adding a new paragraph (g), as follows:

§ 230.215 Accredited investor.

* * * * *

(a) Any savings and loan association or other institution specified in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker of dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is a savings and loan association, or if the employee benefit plan has total assets in excess of $5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

* * * * *

(c) Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5,000,000;

* * * * *

(f) Any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(g) Any trust, with total assets in excess of $5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in § 230.506(b)(2)(ii); and

(h) Any entity in which all of the equity owners are accredited investors.

3. Section 230.501 is amended by revising paragraphs (a)(1), (a)(3), (a)(8), and the first sentence of paragraph (c), removing paragraph (a)(5), redesignating paragraphs (a)(6) and (a)(7) as (a)(5) and (a)(6), revising newly redesignated paragraph (a)(6), and adding new paragraphs (a)(7) and (e)(3) before the Note as follows:

§ 230.501 Definitions and terms used in Regulation D.

* * * * *

(a) * * *

(1) Any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; insurance company as defined in section 2(13) of the Act; investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; 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; employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of $5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

* * * * *

(3) Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5,000,000;

* * * * *

(6) Any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(7) Any trust, with total assets in excess of $5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in § 230.506(b)(2)(ii); and

(8) Any entity in which all of the equity owners are accredited investors.

* * * * *

(c) *Aggregate offering price.* "Aggregate offering price" shall mean the sum of all cash, services, property, notes, cancellation of debt, or other consideration to be received by an issuer for issuance of its securities. * * *

* * * * *

(e) *Calculation of number of purchasers.* * * *

(3) A non-contributory employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 shall be counted as one purchaser where the trustee makes all investment decisions for the plan.

* * * * *

4. Section 230.502 is amended by redesignating paragraphs (b)(2)(i)(A), (b)(2)(i)(B), and (b)(2)(i)(C) as paragraphs (b)(2)(i)(B), (b)(2)(i)(C), and (b)(2)(i)(D) respectively, adding a new paragraph (b)(2)(i)(A), revising the paragraph headings of newly redesignated (b)(2)(i) (B) and (C), amending newly redesignated (b)(2)(i)(D) by changing the reference "(b)(2)(i) (A) or (B)" to read "(b)(2)(i) (B) or (C)", and revising paragraphs (b)(2)(ii)(B) and (b)(2)(vi) as follows:

§ 230.502 General conditions to be met.

* * * * *

(b) *Information requirements.*

(2) *Type of information to be furnished.*

(i) * * *

(A) *Offerings up to $2,000,000.* The same kind of information as would be required in Part II of Form 1-A [17 CFR 239.90], except that the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited.

(B) *Offerings up to $7,500,000.*

* * * * *

(C) *Offerings over $7,500,000.*

* * * * *

(ii) * * *

(B) The information contained in an annual report on Form 10-K under the Exchange Act or in a registration statement on Form S-1 [17 CFR 239.11], Form S-11 [17 CFR 239.18], or Form S-18 [17 CFR 239.28] under the Act or on Form 10 [17 CFR 249.210] under the Exchange Act, whichever filing is the most recent required to be filed.

* * * * *

(vi) For business combinations or exchange offers, in addition to information required by Form S-4 [17 CFR 239.25], the issuer shall provide to each purchaser at the time the plan is submitted to security holders, or, with an exchange, during the course of the transaction and prior to sale, written information about any terms or arrangements of the proposed transactions that are materially different from those for all other security holders. For purposes of this subsection, an issuer which is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act may satisfy the requirements of Part I.B. or C. of Form S-4 by compliance with paragraph (b)(2)(i) of this § 230.502.

* * * * *

5. Section 230.504 is amended by revising the section heading, paragraph (b), and Notes 1 and 2, and adding a new Note 3 as follows:

§ 230.504 Exemption for Limited Offerings and Sales of Securities Not Exceeding $1,000,000.

* * * * *

(b) *Conditions to be met*—(1) *General conditions.* To qualify for exemption under this § 230.504, offers and sales must satisfy the terms and conditions of §§ 230.501 through 230.503 except that the provisions of §§ 230.503 (c) and (d) shall not apply to offers and sales of securities under this § 230.504 that are made.

(i) Exclusively in one or more states each of which provides for the registration of the securities and requires the delivery of a disclosure document before sale and that are made in accordance with those state provisions; or

(ii) In one or more states which have no provision for the registration of the securities and the delivery of a disclosure document before sale, if the securities have been registered in at least one state which provides for such registration and delivery before sale, offers and sales are made in the state of registration in accordance with such state provisions, and such document is in fact delivered to all purchasers in the states which have no such procedure, before the sale of securities.

(2) *Specific condition*—(i) *Limitation on aggregate offering price.* The aggregate offering price for an offering of securities under this § 230.504, as defined in § 230.501(c), shall not exceed $1,000,000, less the aggregate offering price for all securities sold within the twelve months before the start of and during the offering of securities under this § 230.504 in reliance on any exemption under section 3(b) of the Act or in violation of section 5(a) of the Act, provided that no more than $500,000 of such aggregate offering price is attributable to offers and sales of securities without registration under a state's securities laws.

Note 1.— The calculation of the aggregate offering price is illustrated as follows:

Example 1. If an issuer sells $500,000 worth of its securities pursuant to state registration on January 1, 1988 under this § 230.504, it would be able to sell an additional $500,000 worth of securities either pursuant to state registration or without state registration during the ensuing twelve-month period, pursuant to this § 230.504.

Example 2. If an issuer sold $900,000 pursuant to state registration on June 1, 1987 under this § 230.504 and an additional $4,100,000 on December 1, 1987 under § 230.505, the issuer could not sell any of its securities under this § 230.504 until December 1, 1988. Until then the issuer must count the December 1, 1987 sale towards the $1,000,000 limit within the preceding twelve months.

Note 2.— If a transaction under this § 230.504 fails to meet the limitation on the aggregate offering price, it does not affect the availability of this § 230.504 for the other transactions considered in applying such limitation. For example, if an issuer sold $1,000,000 worth of its securities pursuant to state registration on January 1, 1988 under this § 230.504 and an additional $500,000 worth on July 1, 1988, this § 230.504 would not be available for the later sale, but would still be applicable to the January 1, 1988 sale.

Note 3.— In addition to the aggregation principles, issuers should be aware of the applicability of the integration principles set forth in § 230.502(a).

By the Commission.

Jonathan G. Katz,

Secretary.

March 3, 1988.

[FR Doc. 88-5131 Filed 3-9-88; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6759; File No. S7-4-88]

Regulation D Revisions

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission is publishing for comment additional revisions to Regulation D. The regulation provides for three different exemptions from the registration requirements of the Securities Act of 1933 (the "Securities Act") for certain limited offerings of securities. The revisions proposed here involve additions to the "accredited investor" definition, a change in the requirements which are designed to reflect the "restricted" character of securities issued in a Regulation D transaction, and the deletion of the filing of a Form D as a condition to the Regulation D exemption. A new Rule 507 is proposed which would disqualify an issuer from the use of any of the Regulation D exemptions if it has been found to have violated Rule 503 which will still require the filing of a Form D no later than fifteen days after the first sale of securities. A new rule 508 is also proposed which would provide that minor and isolated failures to comply with the requirements of Regulation D will not necessarily cause the loss of an exemption. In a companion action today, a number of revisions to the regulation have been finalized.

DATE: Comments must be received on or before May 13, 1988.

ADDRESS: Comment letters should refer to File No. S7-4-88 and be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comments will be available for public inspection and copying in the Commission's Public Reference Room at the above address.

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff or Karen M. O'Brien, (202) 272-2644, Office of Small Business Policy, Division of Corporation Finance, U.S. Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing several revisions to Regulation D,[1] which exempts certain transactions from the registration requirements of the Securities Act.[2] The revisions would add to the list of accredited investors certain plans established and maintained by the governments of the states or their political subdivisions as well as their agencies and instrumentalities, for the benefit of their employees. The list of steps previously required to be followed to assure the "restricted" status or nontransferable nature of securities issued in Regulation D is proposed to be no longer mandatory, although they would still demonstrate satisfactorily that reasonable care has been taken to assure that purchasers are not underwriters. The filing of Form D [3] as a condition to the Regulation D exemption is proposed to be eliminated. In lieu thereof, disqualifying provisions would be added which would prohibit an issuer, found to have violated the filing requirement, from using Regulation D in the future. Pursuant to another proposed provision, isolated and minor deviations from the requirements in Regulation D that occur despite a good faith and reasonable attempt to comply would not cause an issuer to lose an otherwise appropriate exemption from the registration provisions of the Securities Act.

I. Proposed Revisions to Regulation D

Regulation D is the series of rules, Rules 501-506, which establish three separate exemptions from the registration requirements of the Securities Act. Last January, a number of proposals to amend the regulation were published for comment.[4] Today, the Commission adopted most of these proposals.[5] Several matters were raised in the public comments, especially in the area of whether or not a substantial or good faith compliance standard should apply to the regulation, which the Commission had asked about in the original notice of proposed rulemaking.

A. Accredited Investors

A number of commenters in the initial rulemaking from last January noted that states, municipalities, their instrumentalities and agencies, public universities and pension plans for their employees do not qualify for accreditation under section 4(6) of the Securities Act or Regulation D.[6] The Commission is proposing to amend Rules 215 and 501 to specifically include in the accredited lists, plans established and maintained by the governments of the states, their political subdivisions, as well as their agencies and instrumentalities for the benefit of their employees, when two conditions are met. The plan must have either a bank, savings and loan association, insurance company or registered investment adviser as its plan fiduciary. In addition, the plan must impose requirements governing fiduciary responsibility similar to those established by the Employee Retirement Income Security Act of 1974 ("ERISA").[7] If such plans have the same kind of fiduciaries, plus the same standards governing investments as ERISA plans, there does not appear to be any reason to prohibit them from being accredited. Because such plans are exempt from coverage under ERISA, they do not presently qualify for accreditation under Rule 501(a)(1), Rule 215(a) or section 2(15)(i) of the Securities Act. The Commission understands, however, that many of the states institutional investor exemptions include pension and profit-sharing plans, without regard to employer identification.[8] Although the present rule provides that an ERISA plan also may be accredited if it has more than $5 million in assets, this alternative test is not proposed for the non-ERISA public plans, because unlike ERISA plans, they are not subject to specific regulations and governmental oversight.

Comment also is requested on the issue of including states, their political subdivisions, and agencies and instrumentalities in their own right, and state universities and colleges as accredited investors. Several of the states exempt sales to these kinds of investors.[9] After considering the comments, the Commission may decide to include one or more of these entities as accredited investors. Alternatively, it may be desirable to include provisions to assure that those included would have the requisite knowledge or sophistication to qualify as accredited investors. Commenters are specifically requested to address the need for

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[1] 17 CFR 230.501-230.506. A number of revisions to the regulation also have been adopted today. Release No. 33-6758.

[2] 15 U.S.C. 77a *et seq.*

[3] 17 CFR 239.500.

[4] Release No. 33-6683 (January 16, 1987) [52 FR 3015].

[5] Release No. 33-6758.

[6] The Commission uses a uniform definition applicable to section 4(6) and Regulation D. Thus, Rule 501(a) is the same as section 2(15) of the Securities Act combined with Rule 215, 17 CFR 230.215. The proposals today would continue this uniformity by revising Rule 215.

[7] 29 U.S.C. 1104-1107.

[8] Uniform Securities Act, section 402(b)(8).

[9] *E.g.*, California Administrative Code, Rule 260.104.14 [1 CCH Blue Sky L. Rep. ¶ 11,806]; Release No. 85-2, Michigan Corporation and Securities Bureau [1A CCH Blue Sky L. Rep. ¶ 32,602]; South Dakota Codified Laws § 47-31-88 [3 CCH Blue Sky L. Rep ¶ 52,229]; Wisconsin Uniform Securities Law § 551.23(8) ([3 CCH Blue Sky L. Rep. ¶ 64,113]).

conditions to such accreditation and the appropriate conditions, e.g., the presence of some specifically named fiduciary; or size of the fund. Comments with regard to other suitability-for-investment standards covering states and these other entities also are invited.

B. Substantial or Good-Faith Compliance

Many comments were received in response to the Commission's solicitation of comments about a standard of good faith compliance with Regulation D. Two revisions are being proposed to be made with what appear to be the principal areas of concern about technical noncompliance. In addition, a new rule is proposed which would provide that the Regulation D exemption for all sales is not lost by minor, isolated failures to comply with requirements in the regulation, where those deviations occur despite a good faith and reasonable attempt to comply. However, the exemption may be lost for a particular sale, if the deviation is significant with respect to that sale.

Comments are requested on each of the proposed revisions. In addition, commenters are requested to address whether a general substantial compliance standard is needed if the proposed revisions regarding the requirements designed to reflect the restricted character of the securities and the deletion of the filing of a Form D as a condition to the Regulation D exemption are adopted. Conversely, commenters should address the need for the latter two proposals if a general, substantial good faith standard is adopted.

(1) Demonstrating the "Restricted" Nature of the Securities

Rule 502(d) indicates that generally securities acquired in a Regulation D transaction have the same restricted status as securities acquired in a transaction under section 4(2) of the Securities Act and cannot be resold without registration or an exemption. In this connection, the issuer is reminded of its obligation to ensure that no distribution of these securities occurs without registration or appropriate exemption and that it take reasonable care to assure that purchasers are not underwriters under the Securities Act. Rule 502(d) lists certain actions which must be taken to reflect such reasonable care, including purchaser inquiries, written notifications to purchasers and legending securities. Inasmuch as compliance with Rule 502 is a condition to a Regulation D exemption, failure to take any of these steps makes the exception unavailable. Commenters have frequently characterized this feature of the regulation as one particularly well-suited to be the subject of a substantial or good faith compliance standard.

Under the proposed amendment, the listing in Rule 502(d) would not be mandatory. Taking such actions, however, would be a satisfactory demonstration of the desired reasonable care. In this regard the burden would continue to be on the issuer to demonstrate that reasonable care had been taken to guard against an inappropriate distribution of "restricted" securities and to make certain that investors appreciate the restricted nature of the securities.[10]

(2) Removing the Conditions to File Form D and New Rule 507

Rule 503 requires the filing of a notification on Form D within 15 days after the first sale of securities offered in reliance upon an exemption under Regulation D. Rules 504, 505 and 506 each condition the exemption upon compliance with Rule 503. Failure to make the filing in a timely manner makes the exemption unavailable. Commenters have frequently criticized this provision.

As proposed, the filing obligation under Rule 503 would continue but would no longer be a condition to the exemption. In order to provide an incentive for filing the Form D in a timely manner, the Commission is proposing new Rule 507, which would disqualify an issuer from the use of the Regulation D exemptions if it had been found to have violated Rule 503. Proposed Rule 507 has been patterned on Rule 252.[11] The Commission would have the authority to waive disqualifications under proposed Rule 507 upon a showing of good cause by the issuer that the Regulation D exemption should not be denied.[12]

(3) Isolated and Minor Deviations From Requirements in Regulation D

Proposed new Rule 508 is designed to provide additional flexibility in Regulation D so that minor, isolated failures in reasonable and good faith compliance efforts would not cause loss of the exemption from the registration requirements of the Securities Act for the entire offering. The exemption would be lost as to a specific sale affected by the violation, unless the violation is insignificant with respect to that sale. The rule sets forth several examples of violations that could fall within this provision. These examples are intended to highlight the minor nature of these deviations and the necessity for a good faith and reasonable effort to comply with the regulation in its entirety. Moreover, there are critical elements to a Regulation D exemption under the Securities Act, which establish the essence of the exemption; there cannot be any deviation from these requirements. Thus, for example, under Regulation D, limited offerings are contemplated and no general solicitation or advertising would be consistent with the exemptions provided.[13] The dollar limitations are critical elements of both the Rule 504 and Rule 505 exemptions. Use of either of these provisions by an investment company would be unacceptable; as would the use of Rule 504 by a reporting company. While neither this recitation nor the listing in Rule 508 is exhaustive, they do reflect the kinds of items which are encompassed and not encompassed by the rule.

Comments are requested as to whether the rule should provide, as proposed, that the exemption may be lost for certain offers and sales, if such offers and sales have been directly affected by the violation, even if the exemption is not lost for the offering as a whole. Comments also are requested as to whether defining insignificant to mean isolated and minor is a reasonable approach or whether any definition of the term is needed. Any other comments with respect to the scope of the proposed rule are also invited.

II. NASAA Cooperation

Regulation D serves as the basis for the uniform limited offering exemption ("ULOE"),[14] an official policy guideline of the North American Securities Administrators Association, Inc. ("NASAA").[15] More than half of the states have adopted ULOE or an exemption substantially similar to it. The Commission and NASAA continue

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[10] The obligation to advise purchasers that they have restricted securities comes from Rule 10b-5, 17 CFR 240.10b-5. *See* Release No. 33-5226 (January 10, 1972) [37 FR 600].

[11] 17 CFR 230.252.

[12] A similar rule, Rule 703, was proposed in Release No. 33-6726 (July 30, 1987) in connection with a proposed exemption for certain employee compensation arrangements.

[13] There is an exception for certain Rule 504 offerings.

[14] CCH NASAA Rep. ¶6201 at 6101

[15] NASAA is an association of the securities commissioners of each of the 50 states, the District of Columbia, Puerto Rico and several of the Canadian provinces. An official policy guideline represents endorsement of a principle which NASAA believes has general application. NASAA has no power to enact legislation, promulgate regulations or otherwise bind the legislatures or administrative agencies of its members.

to encourage the remaining states to adopt ULOE.

The proposals made today by the Commission have been provided to representatives of the NASAA State-Federal Coordination Committee. The Commission appreciates the cooperation of NASAA and its Committee in considering these proposals as an addition to the ULOE policy statement.

III. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding these Regulation D proposals.

The analysis notes that the revisions to the "accredited investor" definition, and the elimination of the filing and certain other conditions to the exemptions are proposed as a result of public comment and the Commission's experience. The proposal of Rule 507 is designed as a complement to the elimination of the filing condition to encourage continued compliance with Rule 503. The proposal of Rule 508 is intended to provide that the exemption will not be lost if there are inadvertent minor and isolated failures to comply with the requirements. The objective of unifying exemptive schemes at the states and federal levels such as through a coordinated ULOE policy guideline and Regulation D is noted, since it can aid smaller issuers in the capital formation process. The proposals add no new reporting, recordkeeping or other compliance requirements and in fact may eliminate the need to provide certain information.

A copy of the Initial Regulatory Flexibility Analysis may be obtained from Twanna Young in the Office of Small Business Policy, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W. Washington, DC 20549.

IV. Cost—Benefit Analysis

To assist in a full evaluation of the costs and benefits of these proposed revisions to Regulation D, the Commission seeks views and other data about these issues. The Commission believes the proposals if adopted would provide additional cost savings to issuers without compromising investor protection. The proposed revisions liberalizing certain conditions to the exemptions may produce savings through a reduction in the number of inadvertent late filings of Forms D causing a loss of the Regulation D exemption.

V. Statutory Basis and Text of the Proposed Amendments

The amendments to the Commission's rules are being proposed pursuant to sections 2(15), 3(b), 4(2), 4(6), 19(a) and 19(c) of the Securities Act.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

Text of Proposals

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

(Arrows > < indicate proposed additions, bracket [ ] indicate proposed deletions)

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

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

Authority: Sections 230.100 to 230.174 issued under Sec. 19, 48 Stat. 85 as amended; 15 U.S.C. 77s, * * *

2. Section 230.215 is amended by revising paragraph (a) as follows (the introductory text is republished):

§ 230.215 Accredited investor.

The term "accredited investor" as used in section 2(15)(ii) of the Securities Act of 1933 (15 U.S.C. 77b(15)(ii) shall include the following persons:

(a) Any savings and loan association or other institution specified in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; > 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, if investment decisions are made by a plan fiduciary which is a bank, savings and loan association, insurance company, or registered investment adviser and the plan establishes fiduciary principles the same as or similar to those contained in sections 404–407 of Title I of the Employee retirement Income Security Act of 1974; < an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is a savings and loan association, or if the employee benefit plan has total assets in excess of $5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

* * * * *

3. Section 230.501 is amended by revising the introductory text and paragraph (a)(1) as follows:

§ 230.501 Definitions and terms used in Regulation D.

As used in Regulation D (§§ 230.501– >230.508<), the following terms shall have the meaning indicated:

(a) * * *

(1) Any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; insurance company as defined in section 2(13) of the Act; investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; 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, if investment decisions are made by a plan fiduciary which is a bank, savings and loan association, insurance company, or registered investment adviser and the plan establishes fiduciary principles the same as or similar to those contained in sections 404–407 of Title I of the Employee Retirement Income Security Act of 1974, < employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of $5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

* * * * *

4. Section 230.502 is amended by revising the introductory paragraph and paragraph (d) introductory text and added a concluding paragraph as follows:

§ 230.502 General conditions to be met.

The following conditions shall be applicable to offers and sales made under Regulation D (§§ 230.501—>230.508<):

* * * * *

(d) *Limitations on resale.* Except as provided in § 230.504(b)(1), securities acquired in a transaction under Regulation D shall have the status of securities acquired in a transaction under section 4(2) of the Act and cannot be resold without registration under the Act or an exemption therefrom. The issuer shall exercise reasonable care to assure that the purchasers of the securities are not underwriters within the meaning of the Act, which reasonable care > may be demonstrated by < [shall include, but not be limited to,] the following:

(1) * * *

(2) * * *

(3) * * *

> While taking these actions will establish the requisite reasonable care, they are not the exclusive method to demonstrate such care. Other actions by the issuer may satisfy this provision. <

5. Section 230.504 is amended by revising paragraph (b)(1) as follows:

§ 230.504 Exemption for limited offerings and sales of securities not exceeding $1,000,000.

* * * * *

(b) *Conditions to be met*—(1) *General conditions.* To qualify for exemption under this § 230.504, offers and sales must satisfy the terms and conditions of §§ 230.501 > and 230.502, < [through 230.503,] except that the provisions of §§ 230.502 (c) and (d) shall not apply to offers and sales of securities under this § 230.504 that are made

(i) Exclusively in one or more states each of which provides for the registration of the securities and requires the delivery of a disclosure document before sale and that are made in accordance with those state provisions; or

(ii) In one or more states which have no provision for the registration of the securities and the delivery of a disclosure document before sale, if the securities have been registered in at least one state which provides for such registration and delivery before sale, offers and sales are made in the state of registration in accordance with such state provisions, and such document is in fact delivered to all purchasers in the states which have no such procedure, before the sale of securities.

* * * * *

6. Section 230.505 is amended by revising paragraph (b)(1) as follows:

§ 230.505 Exemption for limited offers and sales of securities not exceeding $5,000,000.

* * * * *

(b) *Conditions to be met*—(1) *General conditions.* To qualify for exemption under this § 230.506, offers and sales must satisfy all the terms and conditions of § 230.505, offers and sales must satisfy all the terms and conditions of §§ 230.501 > and 230.502. < [through 230.503.]

* * * * *

7. Section 230.506 is amended by revising paragraph (b)(1) as follows:

§ 230.506 Exemption for limited offers and sales without regard to dollar amount of offering.

* * * * *

(b) *Conditions to be met*—(1) *General conditions.* To qualify for exemption under this § 230.501 > and 230.502. < [through 230.503.]

* * * * *

8. By adding a new § 230.507 to read as follows:

§ 230.507 Disqualifying provision relating to exemptions under §§ 230.504, 230.505 and 230.506.

(a) No exemption under §§ 230.504, 230.505 or 230.506 shall be available for an issuer if such issuer, any of its predecessors or affiliates have been subject to any order, judgment, or decree of any court of competent jurisdiction temporarily, preliminarily or permanently enjoining such person for failure to comply with § 230.503.

(b) Paragraph (a) of this section shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied.

9. By adding a new § 230.508 to read as follows:

§ 230.508 Isolated and minor deviations from requirements in Regulation D.

(a) A failure to comply with a condition or requirement of this Regulation D that is insignificant with respect to the offering as a whole will not result in the loss of the exemption under §§ 230.504, 230.505 or 230.506 if the issuer can show a good faith and reasonable attempt to comply with all provisions of the Regulation. No exemption would be available with respect to an offer or sale to a particular person unless the failure to comply was insignificant with respect to that offer or sale, as well as to the offering as a whole.

(b) For purposes of this rule, insigificant means an isolated and minor deviation from requirements.

Note. —A failure to comply with a condition or requirement of Regulation D that is insignificant with respect to the offering as a whole may be illustrated as follows:

Example 1. Immaterial written information provided to an accredited investor is omitted from the description required to be delivered to non-accredited investors.

Example 2. A purchaser representative fails to disclose a relationship with the issuer prior to a purchaser's acknowledgement of the representative but does so before the purchaser subscribes for an investment.

Example 3. One purchaser, as a result of a clerical error, fails to receive the information package prior to the completion of the sale.

By the Commission.

Jonathan G. Katz,

Secretary.

March 3, 1988.

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