

it is not a U.S. person and is not acquiring the securities for the account or benefit of any U.S. person or is a U.S. person who purchased securities in a transaction that did not require registration under the Act;

(2) The purchaser of the securities (other than a distributor) agrees to resell such securities only in accordance with the provisions of this Regulation S, pursuant to registration under the Act, or pursuant to an available exemption from registration;

(3) The securities of a domestic issuer contain a legend to the effect that transfer is prohibited except in accordance with the provisions of this Regulation S; and

(4) The issuer is required, either by contract or a provision in its bylaws, articles, charter or comparable document, to refuse to register any transfer of the securities not made in accordance with the provisions of this Regulation S; *Provided, however*, that if the securities are in bearer form or foreign law prevents the issuer of the securities from refusing to register securities transfers, other reasonable procedures (such as a legend described in paragraph (c)(3)(iii)(B)(3) of this section) are implemented to prevent any transfer of the securities not made in accordance with the provisions of this Regulation; and

(iv) Each distributor selling securities to a distributor, a dealer (as defined in section 2(12) of the Act (15 U.S.C. 77b(12))), or a person receiving a selling concession, fee or other remuneration, prior to the expiration of a 40-day restricted period in the case of debt securities or a one-year restricted period in the case of equity securities, sends a confirmation or other notice to the purchaser stating that the purchaser is subject to the same restrictions on offers and sales that apply to a distributor.

(4) *Non-Participating Preferred Stock and Asset-Backed Securities.* Notwithstanding paragraphs (c)(1) through (c)(3) of this section, only the requirements of paragraph (c) of this section applicable to the offer and sale of debt securities of an issuer need be satisfied with respect to the offer and sale by such issuer of the following securities:

(i) Non-convertible capital stock, the holders of which are entitled to a preference in payment of dividends and in distribution of assets on liquidation, dissolution, or winding up of the issuer, but are not entitled to participate in residual earnings or assets of the issuer; or

(ii) Securities of a type that either:

(A) Represents an ownership interest in a pool of discrete assets, or certificates of interest or participation in such assets (including any rights designed to assure servicing, or the receipt or timeliness of receipt by holders of such assets, or certificates of interest or participation in such assets, of amounts payable thereunder), provided that the assets are not generated or originated between the issuer of the security and its affiliates; or

(B) Is secured by one or more assets or certificates of interest or participation in such assets, and the securities, by their terms, provide for payments of principal and interest (if any) in relation to payments or reasonable projections of payments on assets meeting the requirements of paragraph (c)(4)(ii)(A) of this section, or certificates of interest or participations in assets meeting such requirements.

For purposes of paragraph (c)(4)(ii) of this section, the term *assets* means: securities, installment sales, accounts receivable, notes, leases or other contracts, or other assets that by their terms convert into cash over a finite period of time.

(5) *Guaranteed Securities.* Notwithstanding paragraphs (c)(1) through (c)(4) of this section, in offerings of debt securities fully and unconditionally guaranteed as to principal and interest by the parent of the issuer of the debt securities, only the requirements of paragraph (c) of this section that are applicable to the offer and sale of the guarantee need be satisfied with respect to the offer and sale of the guaranteed debt securities.

§ 230.904 Resales.

An offer or sale of securities by any person other than the issuer, a distributor, any of their respective affiliates (except any officer or director who is an affiliate solely by virtue of holding such position), or any person acting

on behalf of any of the foregoing, shall be deemed to occur outside the United States within the meaning of § 230.901 if it satisfies the following requirements:

(a) *Requirement of Offshore Transaction.* The offer or sale shall be made in an offshore transaction.

(b) *Prohibition Against Directed Selling Efforts.* No directed selling efforts shall be made in the United States by the seller, an affiliate, or any person acting on their behalf.

(c) *Additional Conditions.* In addition to the conditions set forth in §§ 230.904 (a) and (b) of this section, the following requirements are satisfied:

(1) *Resales by Dealers and Persons Receiving Selling Concessions.* In the case of an offer or sale of securities of any issuer prior to the expiration of the restricted period specified in § 230.903 (c) (2) or (3), as applicable, by a dealer, as defined in section 2(12) of the Act [15 U.S.C. 77b(12)], or a person receiving a selling concession, fee or other remuneration in respect of the securities offered or sold:

(i) Neither the seller nor any person acting on his behalf knows that the offeree or buyer of the securities is a U.S. person; and

(ii) If the seller or any person acting on the seller's behalf knows that the purchaser is a dealer, as defined in Section 2(12) of the Act (15 U.S.C. 77b(12)), or is a person receiving a selling concession, fee or other remuneration in respect of the securities sold, the seller or a person acting on the seller's behalf sends to the purchaser a confirmation or other notice stating that the securities may be offered and sold during the restricted period only; in accordance with the provisions of this Regulation S; pursuant to registration of the securities under the Act; or pursuant to an available exemption from the registration requirements of the Act.

(2) *Resales by Certain Affiliates.* In the case of an offer or sale of securities of any issuer by an officer or director of the issuer or a distributor, who is an affiliate of the issuer or distributor solely by virtue of holding such position, no selling concession, fee or other remuneration is paid in connection with such offer or sale other than the usual and customary broker's commis-

sion that would be received by a person executing such transaction as agent.

REGULATION CE—COORDINATED EXEMPTIONS 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.

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