

Securities and Exchange Commission

§ 230.610

§ 230.608 Prohibition of certain statements.

No offering circular or other written or oral communication used in connection with any offering under §§ 230.601 to 230.610a shall contain any language stating or implying that the Commission has in any way passed upon the merits of, or given approval to, guaranteed or recommended the securities offered or the terms of the offering or has determined that the securities are exempt from registration, or has made any finding that the statements in any such offering circular or other communication are accurate or complete.

§ 230.609 Reports of sales hereunder.

Within 30 days after the end of each six-month period following the date of the original offering circular, or of the statement required by § 230.606, the issuer or other person for whose account the securities are offered shall file with the Commission four copies of a report on Form 2-E¹ containing the information called for by that form. A final report shall be made upon completion or termination of the offering and may be made prior to the end of the six-month period in which the last sale is made.

§ 230.610 Suspension of exemption.

(a) The Commission may, at any time after the filing of a notification, enter an order temporarily suspending the exemption, if it has reason to believe that:

(1) No exemption is available under §§ 230.601 to 230.610a for the securities purported to be offered hereunder or any of the terms or conditions of §§ 230.601 to 230.610a have not been complied with, including failure to file any report as required by § 230.609.

(2) The notification, the offering circular or any other sales literature contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(3) The offering is being made or would be made in violation of section 17 of the Act;

(4) Any event has occurred after the filing of the notification which would have rendered the exemption hereunder unavailable if it has occurred prior to such filing;

(5) Any person specified in paragraph (b) of § 230.602 has been indicted for any crime or offense of the character specified in paragraph (b)(3) thereof, or any proceeding has been initiated for the purpose of enjoining any such person from engaging in or continuing any conduct or practice of the character specified in paragraph (b)(4);

(6) Any person specified in paragraph (c) of § 230.602 has been indicted for any crime or offense of the character specified in paragraph (c)(1) thereof, or any proceeding has been initiated for the purpose of enjoining any such person from engaging in or continuing any conduct or practice of the character specified in paragraph (c)(2); or

(7) The issuer or any officer, director or underwriter has failed to cooperate, or has obstructed or refused to permit the making of an investigation by the Commission in connection with any offering made or proposed to be made hereunder.

(b) Upon the entry of an order under paragraph (a) of this section, the Commission will promptly give notice to the persons on whose behalf the notification was filed (1) that such order has been entered, together with a brief statement of the reasons for the entry of the order, and (2) that the Commission, upon receipt of a written request within 30 days after the entry of such order, will, within 20 days after the receipt of such request, set the matter down for hearing at a place to be designated by the Commission. If no hearing is requested and none is ordered by the Commission, the order shall become permanent on the thirtieth day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission. Where a hearing is requested or is ordered by the Commission, the Commission will, after notice of an opportunity for such hearing, either vacate the order or enter an order permanently suspending the exemption.

(c) The Commission may at any time after notice of and opportunity for hearing, enter an order permanently

¹ Filed as part of original document.

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suspending the exemption for any reason upon which it could have entered a temporary suspension order under paragraph (a) of this section. Any such order shall remain in effect until vacated by the Commission.

(d) All notices required by this part shall be given to the person or persons on whose behalf the notification was filed by personal service, registered or certified mail or confirmed telegraphic notice at the addresses of such persons given in the notification.

[23 FR 10484, Dec. 30, 1958, as amended at 29 FR 16982, Dec. 11, 1964]

§ 230.610a Schedule A: Contents of offering circular for small business investment companies; Schedule B: Contents of offering circular for business development companies.

SCHEDULE A—CONTENTS OF OFFERING CIRCULAR FOR SMALL BUSINESS INVESTMENT COMPANIES

General Instructions

1. The information in the offering circular should be organized to make it easier to understand the organization and operation of the company. The required information need not be in any particular order, except that Items 1 and 2 must be the first and second items in the offering circular.

2. The offering circular, including the cover page, may contain more information than is called for by this Schedule, provided that it is not incomplete, inaccurate, or misleading. Also, the additional information should not, by its nature, quantity, or manner of presentation, obscure or impede understanding of required information.

Item 1. Cover Page

The cover page of the offering circular shall include the following information:

- (a) The name of the issuer;
- (b) The mailing address of the issuer's principal executive offices including the zip code and the issuer's telephone number;
- (c) The date of the offering circular;
- (d) A list of the type and amount of securities offered (e.g., if the securities offered include redemption or conversion features, so state);
- (e) The following statement in capital letters printed in boldface roman type at least as large as ten-point modern type and at least two points leaded:

“THESE SECURITIES ARE OFFERED PURSUANT TO AN EXEMPTION FROM REGISTRATION WITH THE SECURITIES AND EXCHANGE COMMISSION; HOWEVER, THE COMMISSION HAS NOT MADE AN INDE-

PENDENT DETERMINATION THAT THE SECURITIES BEING OFFERED ARE EXEMPT FROM REGISTRATION. THE SECURITIES AND EXCHANGE COMMISSION DOES NOT PASS UPON THE MERITS OF OR GIVE ITS APPROVAL TO ANY SECURITIES OFFERED OR THE TERMS OF THE OFFERING, NOR DOES IT PASS UPON THE ACCURACY OR COMPLETENESS OF ANY OFFERING CIRCULAR OR OTHER SELLING LITERATURE.”

(f) The name of the underwriter or underwriters, if applicable;

(g) A cross-reference to the place in the offering circular discussing the material risks involved in purchasing the securities, printed in bold-face roman type at least as high as ten-point modern type and at least two points leaded;

(h) The approximate date when the proposed sale to the public will begin; and

(i) The information called for by the following table shall be given, in substantially the tabular form indicated, on the outside front cover page of the offering circular as to all securities being offered (estimate, if necessary):

	Offering price to public	Underwriting discounts and commissions	Proceeds to issuer or other persons
Per share or other unit basis.			
Total.			

If the securities are to be offered on a best efforts basis, the cover page should set forth the termination date, if any, of the offering, any minimum required sale, and any arrangements to place the funds received in an escrow, trust, or similar arrangement. The following tabular presentation of the total maximum and minimum securities to be offered should be combined with the table required above:

	Offering price to public	Underwriting discounts and commissions	Proceeds to issuer or other persons
Total Minimum.			
Total Maximum.			

Instructions

1. The term *commissions* shall include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which any underwriter is interested, made in connection with the sale of such security.

2. Only commissions paid by the issuer in cash are to be indicated in the table. Commissions paid by other persons or any form