

**§ 230.255**

**17 CFR Ch. II (4-1-11 Edition)**

or otherwise, from any prospective investor is permitted. No sale may be made until qualification of the offering statement.

(b) While not a condition to any exemption pursuant to this section:

(1) On or before the date of its first use, the issuer shall submit a copy of any written document or the script of any broadcast with the Commission's main office in Washington, DC. (Attention: Office of Small Business Review). The document or broadcast script shall either contain or be accompanied by the name and telephone number of a person able to answer questions about the document or the broadcast.

NOTE: Only solicitation of interest material that contains substantive changes from or additions to previously submitted material needs to be submitted.

(2) The written document or script of the broadcast shall:

(i) State that no money or other consideration is being solicited, and if sent in response, will not be accepted;

(ii) State that no sales of the securities will be made or commitment to purchase accepted until delivery of an offering circular that includes complete information about the issuer and the offering;

(iii) State that an indication of interest made by a prospective investor involves no obligation or commitment of any kind; and

(iv) Identify the chief executive officer of the issuer and briefly and in general its business and products.

(3) Solicitations of interest pursuant to this provision may not be made after the filing of an offering statement.

(4) Sales may not be made until 20 calendar days after the last publication or delivery of the document or radio or television broadcast.

(c) Any written document under this section may include a coupon, returnable to the issuer indicating interest in a potential offering, revealing the name, address and telephone number of the prospective investor.

(d) Where an issuer has a bona fide change of intention and decides to register an offering after using the process permitted by this section without having filed the offering statement prescribed by § 230.252, the Regulation A

exemption for offers made in reliance upon this section will not be subject to integration with the registered offering, if at least 30 calendar days have elapsed between the last solicitation of interest and the filing of the registration statement with the Commission, and all solicitation of interest documents have been submitted to the Commission. With respect to integration with other offerings, see § 230.251(c).

(e) Written solicitation of interest materials submitted to the Commission and otherwise in compliance with this section shall not be deemed to be a prospectus as defined in section 2(10) of the Securities Act (15 U.S.C. 77b(10)).

[57 FR 36468, Aug. 13, 1992, as amended at 58 FR 26514, May 4, 1993; 61 FR 67202, Dec. 20, 1996]

**§ 230.255 Preliminary Offering Circulars.**

(a) Prior to qualification of the required offering statement, but after its filing, a written offer of securities may be made if it meets the following requirements:

(1) The outside front cover page of the material bears the caption "Preliminary Offering Circular," the date of issuance, and the following statement, which shall run along the left hand margin of the page and be printed perpendicular to the text, in boldfaced type at least as large as that used generally in the body of such offering circular:

An offering statement pursuant to Regulation A relating to these securities has been filed with the Securities and Exchange Commission.

Information contained in this Preliminary Offering Circular is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time an offering circular which is not designated as a Preliminary Offering Circular is delivered and the offering statement filed with the Commission becomes qualified. This Preliminary Offering Circular shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sales of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the laws of any such state.

(2) The Preliminary Offering Circular contains substantially the information

required in an offering circular by Form 1-A (§239.90 of this chapter), except that information with respect to offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices, or other matters dependent upon the offering price may be omitted. The outside front cover page of the Preliminary Offering Circular shall include a bona fide estimate of the range of the maximum offering price and maximum number of shares or other units of securities to be offered or a bona fide estimate of the principal amount of debt securities to be offered.

(3) The material is filed as a part of the offering statement.

(b) If a Preliminary Offering Circular is inaccurate or inadequate in any material respect, a revised Preliminary Offering Circular or a complete Offering Circular shall be furnished to all persons to whom securities are to be sold at least 48 hours prior to the mailing of any confirmation of sale to such persons, or shall be sent to such persons under such circumstances that it would normally be received by them 48 hours prior to receipt of confirmation of the sale.

[57 FR 36468, Aug. 13, 1992, as amended at 61 FR 67202, Dec. 20, 1996]

#### § 230.256 Filing of sales material.

While not a condition to an exemption pursuant to this provision, seven copies of any advertisement or written communication, or the script of any radio or television broadcast, shall be filed with the main office of the Commission in Washington, DC.

NOTE: Only sales material that contains substantive changes from or additions from previously filed material needs to be filed.

[57 FR 36468, Aug. 13, 1992, as amended at 61 FR 67202, Dec. 20, 1996]

#### § 230.257 Reports of sales and use of proceeds.

While not a condition to an exemption pursuant to this provision, the issuer and/or each selling security holder shall file seven copies of a report concerning sales and use of proceeds on Form 2-A (§239.91 of this chapter), or other prescribed form with the

main office of the Commission in Washington, DC. This report shall be filed at the following times:

(a) Every six months after the qualification of the offering statement or any amendment until substantially all the proceeds have been applied; and

(b) within 30 calendar days after the termination, completion or final sale of securities in the offering, or the application of the proceeds from the offering, whichever is the latest event. This report should be labelled the final report. For purposes of this section, the temporary investment of proceeds pending final application shall not constitute application of the proceeds.

[57 FR 36468, Aug. 13, 1992, as amended at 61 FR 67202, Dec. 20, 1996]

#### § 230.258 Suspension of the exemption.

(a) The Commission may at any time enter an order temporarily suspending a Regulation A exemption if it has reason to believe that:

(1) No exemption is available or any of the terms, conditions or requirements of the Regulation have not been complied with, including failures to provide the Commission a copy of the document or broadcast script under §230.254, to file any sales material as required by §230.256 or report as required by §230.257;

(2) The offering statement, any sales or solicitation of interest material contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in 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 Securities Act;

(4) An event has occurred after the filing of the offering statement which would have rendered the exemption hereunder unavailable if it had occurred prior to such filing;

(5) Any person specified in paragraph (a) of §230.262 has been indicted for any crime or offense of the character specified in paragraph (a)(3) of 230.262, 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 (a)(4) of §230.262;