

Securities and Exchange Commission

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and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment, or the issuer reasonably believes immediately prior to making any sale that such purchaser comes within this description.

[47 FR 11262, Mar. 6, 1982, as amended at 54 FR 11373, Mar. 20, 1989]

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

(a) No exemption under § 230.505, § 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, preliminary 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.

[54 FR 11374, Mar. 20, 1989]

§ 230.508 Insignificant deviations from a term, condition or requirement of Regulation D.

(a) A failure to comply with a term, condition or requirement of § 230.504, § 230.505 or § 230.506 will not result in the loss of the exemption from the requirements of section 5 of the Act for any offer or sale to a particular individual or entity, if the person relying on the exemption shows:

(1) The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; and

(2) The failure to comply was insignificant with respect to the offering as a whole, provided that any failure to comply with paragraph (c) of § 230.502, paragraph (b)(2) of § 230.504, paragraphs (b)(2)(i) and (ii) of § 230.505 and paragraph (b)(2)(i) of § 230.506 shall be deemed to be significant to the offering as a whole; and

(3) A good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of § 230.504, § 230.505 or § 230.506.

(b) A transaction made in reliance on § 230.504, § 230.505 or § 230.506 shall comply with all applicable terms, conditions and requirements of Regulation D. Where an exemption is established only through reliance upon paragraph (a) of this section, the failure to comply shall nonetheless be actionable by the Commission under section 20 of the Act.

[54 FR 11374, Mar. 20, 1989, as amended at 57 FR 36473, Aug. 13, 1992]

REGULATION E—EXEMPTION FOR SECURITIES OF SMALL BUSINESS INVESTMENT COMPANIES

AUTHORITY: Sections 230.601 to 230.610a issued under sec. 19, 48 Stat. 85, as amended; 15 U.S.C. 77s.

SOURCE: Sections 230.601 through 230.610a appear at 23 FR 10484, Dec. 30, 1958, unless otherwise noted.

CROSS REFERENCE: For regulations of Small Business Administration under the Small Business Investment Act of 1958, see 13 CFR, Chapter I.

§ 230.601 Definitions of terms used in §§ 230.601 to 230.610a.

As used in §§ 230.601 to 230.610a, the following terms shall have the meaning indicated:

Act. The term *Act* refers to the Securities Act of 1933 unless specifically stated otherwise.

Affiliate. An *affiliate* of an issuer is a person controlling, controlled by or under common control with such issuer. An individual who controls an issuer is also an affiliate of such issuer.

Notification. The term *notification* means the notification required by § 230.604.

Offering circular. The term *offering circular* means the offering circular required by § 230.605.

State. A *State* is any State, Territory or insular possession of the United States, or the District of Columbia.

Underwriter. The term *underwriter* shall have the meaning given in section 2(11) of the Act.

§ 230.602 Securities exempted.

(a) Except as hereinafter provided in this rule, securities issued by any small business investment company

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which is registered under the Investment Company Act of 1940, or any closed-end investment company that has elected to be regulated as a business development company under the Investment Company Act of 1940 or has notified the Commission that it intends to elect to be regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940, will be exempt from registration under the Securities Act of 1933, subject to the terms and conditions of §§ 230.601 to 230.610a. As used in this paragraph, the term *small business investment company* means any company which is licensed as a small business investment company under the Small Business Investment Act of 1958 or which has received the preliminary approval of the Small Business Administration and has been notified by the Administration that it may submit a license application. As used in this paragraph, the term *business development company* means any closed-end investment company which meets the definitional requirements of section 2(a)(48) (A) and (B) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48)).

(b) No exemption under §§ 230.601 to 230.610a shall be available for the securities of any issuer if such issuer or any of its affiliates:

(1) Has filed a registration statement which is the subject of any proceeding or examination under section 8 of the Act, or is the subject of any refusal order or stop order entered thereunder within five years prior to the filing of the notification;

(2) Is subject to pending proceedings under § 230.610 or any similar rule adopted under section 3(b) of the Act, or to an order entered thereunder within five years prior to the filing of such notification;

(3) Has been convicted within five years prior to the filing of such notification of any crime or offense involving the purchase or sale of securities;

(4) Is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years prior to the filing of such notification, temporarily or permanently restraining or enjoining such person from engaging in or continuing any conduct or

practice in connection with the purchase or sale of securities;

(5) Is subject to pending proceedings under section 8(e) of the Investment Company Act of 1940 or to any suspension or revocation order issued thereunder;

(6) Is subject to an injunction issued pursuant to section 35(d) of the Investment Company Act of 1940; or

(7) Is subject to a U.S. Post Office fraud order.

(c) No exemption under §§ 230.601 to 230.610a shall be available for the securities of any issuer, if any of its directors, officers or principal security holders, any investment adviser or any underwriter of the securities to be offered, or any partner, director or officer of any such investment adviser or underwriter:

(1) Has been convicted within ten years prior to the filing of the notification of any crime or offense involving the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer or investment adviser;

(2) Is temporarily or permanently restrained or enjoined by any court from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer or investment adviser;

(3) Is subject to an order of the Commission entered pursuant to section 15(b) or 15A(1) of the Securities Exchange Act of 1934; has been found by the Commission to be a cause of any such order which is still in effect; or is subject to an order of the Commission entered pursuant to section 203 (d) or (e) of the Investment Advisers Act of 1940;

(4) Is suspended or has been expelled from membership in a national securities dealers association or a national securities exchange for conduct inconsistent with just and equitable principles of trade; or

(5) Is subject to a U.S. Post Office fraud order.

(d) No exemption under §§ 230.601 to 230.610a shall be available for the securities of any issuer if any underwriter of such securities, or any director, officer or partner of any such underwriter

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was, or was named as, an underwriter of any securities:

(1) Covered by any registration statement which is the subject of any proceeding or examination under section 8 of the Act, or is the subject of any refusal order or stop order entered thereunder within five years prior to the filing of the notification; or

(2) Covered by any filing which is subject to pending proceedings under §230.610 or any similar rule adopted under section 3(b) of the Act, or to an order entered thereunder within five years prior to the filing of such notification.

(e) Paragraph (b), (c) or (d) of this section shall not apply to the securities of any issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied. Any such determination by the Commission shall be without prejudice to any other action by the Commission in any other proceeding or matter with respect to the issuer or any other person.

(Secs. 3(b) and 3(c) Securities Act of 1933 (15 U.S.C. 77c (b) and (c)); sec. 38, Investment Company Act of 1940 (15 U.S.C. 80a-37))

[23 FR 10484, Dec. 30, 1958, as amended at 49 FR 35344, Sept. 7, 1984]

§ 230.603 Amount of securities exempted.

(a) The aggregate offering price of all of the following securities of the issuer shall not exceed \$5,000,000:

(1) All securities presently being offered under §§230.601 to 230.610a, or specified in the notification as proposed to be so offered;

(2) All securities previously sold pursuant to an offering under §§230.601 to 230.610a, commenced within one year prior to the commencement of the proposed offering; and

(3) All securities sold in violation of section 5(a) of the Act within one year prior to the commencement of the proposed offering.

Notwithstanding the foregoing, the aggregate offering price of all securities so offered or sold on behalf of any one person other than the issuer shall not exceed \$100,000, except that this limitation shall not apply if the securities are to be offered on behalf of the estate

of a deceased person within two years after the death of such person.

(b) The aggregate offering price of securities, which have a determinable market value shall be computed upon the basis of such market value as determined from transactions or quotations on a specified date within 15 days prior to the date of filing the notification, or the offering price to the public, whichever is higher: *Provided*, That the aggregate gross proceeds actually received from the public shall not exceed the maximum aggregate offering price permitted in the particular case by paragraph (a) of this section.

(c) In computing the amount of securities which may be offered under §§230.601 to 230.610a, there need not be included unsold securities the offering of which has been withdrawn with the consent of the Commission by amending the pertinent notification to reduce the amount stated therein as proposed to be offered.

(15 U.S.C. 77c; secs. 3(b) and 3(c), Securities Act of 1933 (15 U.S.C. 77c (b) and (c)); sec. 38, Investment Company Act of 1940 (15 U.S.C. 80a-37))

[23 FR 10484, Dec. 30, 1958, as amended at 36 FR 7050, Apr. 14, 1971; 49 FR 35344, Sept. 7, 1984]

§ 230.604 Filing of notification on Form 1-E.

(a) At least 10 days (Saturdays, Sundays and holidays excluded) prior to the date on which the initial offering or sale of any securities is to be made under §§230.601 to 230.610a, there shall be filed with the Commission four copies of a notification on Form 1-E. The Commission may, however, in its discretion, authorize the commencement of the offering or sale prior to the expiration of such 10-day period upon a written request for such authorization.

(b) The notification shall be signed by the issuer and each person, other than the issuer, for whose account any of the securities are to be offered. If the notification is signed by any person on behalf of any other person, evidence of authority to sign on behalf of such other person shall be filed with the notification, except where an officer of the issuer signs on behalf of the issuer.