

§ 230.503

Commission by an issuer of a notice of sales on Form D (17 CFR 239.500) in which the issuer has made a good faith and reasonable attempt to comply with the requirements of such form, shall not be deemed to constitute general solicitation or general advertising for purposes of this section; *Provided further*, that, if the requirements of § 230.135e are satisfied, providing any journalist with access to press conferences held outside of the United States, to meetings with issuer or selling security holder representatives conducted outside of the United States, or to written press-related materials released outside the United States, at or in which a present or proposed offering of securities is discussed, will not be deemed to constitute general solicitation or general advertising for purposes of this section.

(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(a)(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 section 2(a)(11) of the Act, which reasonable care may be demonstrated by the following:

(1) Reasonable inquiry to determine if the purchaser is acquiring the securities for himself or for other persons;

(2) Written disclosure to each purchaser prior to sale that the securities have not been registered under the Act and, therefore, cannot be resold unless they are registered under the Act or unless an exemption from registration is available; and

(3) Placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under the Act and setting forth or referring to the restrictions on transferability and sale of the securities.

While taking these actions will establish the requisite reasonable care, it is not the exclusive method to demonstrate such care. Other actions by the issuer may satisfy this provision. In addition, § 230.502(b)(2)(vii) requires

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the delivery of written disclosure of the limitations on resale to investors in certain instances.

[47 FR 11262, Mar. 16, 1982, as amended at 47 FR 54771, Dec. 6, 1982; 53 FR 7869, Mar. 11, 1988; 54 FR 11372, Mar. 20, 1989; 55 FR 18322, May 2, 1990; 56 FR 30054, 30055, July 1, 1991; 57 FR 47409, Oct. 16, 1992; 58 FR 26514, May 4, 1993; 59 FR 21650, Apr. 26, 1994; 62 FR 53954, Oct. 17, 1997; 73 FR 969, Jan. 4, 2008; 73 FR 10615, Feb. 27, 2008; 77 FR 18685, Mar. 28, 2012; 78 FR 44804, July 24, 2013]

§ 230.503 Filing of notice of sales.

(a) *When notice of sales on Form D is required and permitted to be filed.* (1) An issuer offering or selling securities in reliance on § 230.504, § 230.505, or § 230.506 must file with the Commission a notice of sales containing the information required by Form D (17 CFR 239.500) for each new offering of securities no later than 15 calendar days after the first sale of securities in the offering, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date would be the first business day following.

(2) An issuer may file an amendment to a previously filed notice of sales on Form D at any time.

(3) An issuer must file an amendment to a previously filed notice of sales on Form D for an offering:

(i) To correct a material mistake of fact or error in the previously filed notice of sales on Form D, as soon as practicable after discovery of the mistake or error;

(ii) To reflect a change in the information provided in the previously filed notice of sales on Form D, as soon as practicable after the change, except that no amendment is required to reflect a change that occurs after the offering terminates or a change that occurs solely in the following information:

(A) The address or relationship to the issuer of a related person identified in response to Item 3 of the notice of sales on Form D;

(B) An issuer's revenues or aggregate net asset value;

(C) The minimum investment amount, if the change is an increase, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D,

does not result in a decrease of more than 10%;

(D) Any address or state(s) of solicitation shown in response to Item 12 of the notice of sales on Form D;

(E) The total offering amount, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than 10%;

(F) The amount of securities sold in the offering or the amount remaining to be sold;

(G) The number of non-accredited investors who have invested in the offering, as long as the change does not increase the number to more than 35;

(H) The total number of investors who have invested in the offering; or

(I) The amount of sales commissions, finders' fees or use of proceeds for payments to executive officers, directors or promoters, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than 10%; and

(iii) Annually, on or before the first anniversary of the filing of the notice of sales on Form D or the filing of the most recent amendment to the notice of sales on Form D, if the offering is continuing at that time.

(4) An issuer that files an amendment to a previously filed notice of sales on Form D must provide current information in response to all requirements of the notice of sales on Form D regardless of why the amendment is filed.

(b) *How notice of sales on Form D must be filed and signed.* (1) A notice of sales on Form D must be filed with the Commission in electronic format by means of the Commission's Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S-T (17 CFR Part 232).

(2) Every notice of sales on Form D must be signed by a person duly authorized by the issuer.

[73 FR 10615, Feb. 27, 2008]

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

(a) *Exemption.* Offers and sales of securities that satisfy the conditions in paragraph (b) of this § 230.504 by an issuer that is not:

(1) Subject to the reporting requirements of section 13 or 15(d) of the Exchange Act,;

(2) An investment company; or

(3) A development stage company that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person, shall be exempt from the provision of section 5 of the Act under section 3(b) of the Act.

(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 (a), (c) and (d), except that the provisions of § 230.502 (c) and (d) will not apply to offers and sales of securities under this § 230.504 that are made:

(i) Exclusively in one or more states that provide for the registration of the securities, and require the public filing and delivery to investors of a substantive disclosure document before sale, and are made in accordance with those state provisions;

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

(iii) Exclusively according to state law exemptions from registration that permit general solicitation and general advertising so long as sales are made only to "accredited investors" as defined in § 230.501(a).

(2) The aggregate offering price for an offering of securities under this § 230.504, as defined in § 230.501(c), shall