Rule 135e legend

Rule 135e provides a safe harbor for announcements, press releases and other press-related materials in connection with an offering structured pursuant to Regulation S. Inserting the legends below will have the effect of the press release ***not*** constituting general solicitation, general advertising or directed selling efforts.

The following legend should be inserted at the top of the press release in all-capital letters:

> NOT FOR RELEASE, PUBLICATION OR DISTRIBUTION IN WHOLE OR IN PART IN OR INTO THE UNITED STATES, CANADA OR JAPAN.

The following legend should be inserted at the end of the press release in addition to any legends or rubrics that might be required by local law or practice:

> This announcement is not for publication or distribution, directly or indirectly, in or into the United States of America. This announcement is not an offer of securities for sale into the United States. The securities referred to herein have not been and will not be registered under the U.S. Securities Act of 1933, as amended, and may not be offered or sold in the United States, except pursuant to an applicable exemption from registration. No public offering of securities is being made in the United States.

The first legend should always include Canada, ***unless*** a Canadian lawyer has been consulted. There is a practice developing of including further jurisdictions, such as Australia, South Africa and New Zealand. There is also practice of including a sweep-up clause (such as "and any other jurisdiction where such activity would be unlawful"). You should ***not*** use a sweep-up clause: it is of ***no*** help to the person who is distributing the press release.

The second legend should be inserted in announcements or press releases as its own, stand-alone paragraph. It should ***not*** be combined with other legends.

In the case of an advertisement in a non-U.S. publication, such as the Financial Times, the first legend can be omitted.

PUBLICITY GUIDELINES

This memorandum sets out the procedures that should be adopted by (i) the ***Company***, (ii) the ***Bookrunner*** and (iii) any **[Selling Shareholder]|[Investment Manager]** together with their respective subsidiaries, affiliates, directors, officers, employees, representatives and agents in connection with publicity and dissemination of information in connection with the Company's **[IPO]|[follow-on offering]** (the ***Offering***). This memorandum also outlines certain legal and regulatory concerns and the responsibilities and potential liabilities of the persons described in the first sentence of this paragraph (the ***Offering Participants***), in relation to any such information and provides guidance as to how certain specific documents should be treated.

The purpose of this memorandum is to set out certain procedures regarding communications and publicity by, or on behalf of, the Company (including by any public relations firm acting for the Company) or the other Offering Participants, including ordinary communications about the business of the Company. These guidelines apply to all forms of communications: written, oral, video or electronic (including e-mail and websites). These guidelines must be brought to the attention of, and strictly adhered to by, all Offering Participants and, in particular, the executive officers of the Company who are or become aware of the Company's plans for the Offering as well as all employees, outside advisers and other persons who handle any aspect of the Company's relations with the public, the press or securities analysts.

Appendix 1 of this memorandum sets out procedures for managing the distribution by or on behalf of the Offering Participants of publicity that might have a bearing on the Offering.

These procedures have immediate effect and apply to all Offering Participants.

It is extremely important to comply with the procedures. Failure to observe the procedures may result in any of the following:

- criminal penalties
- civil liabilities
- termination or delay of the Offering
- limitations on the jurisdictions in which Offering can be made
- purchasers of the Company's shares having the right to rescind.

In addition, the release of information that is inaccurate, misleading or inconsistent with the offering document must be avoided: it may cast doubt on the accuracy of the offering document, which could result in claims against the Company, its directors and officers and other Offering Participants. The overriding concern when releasing information of any kind is, that it should be verifiably accurate and consistent with the offering document.

A key aspect of the procedures is the requirement that all information, in whatever form, that could be regarded as capable of influencing an investor's decision must be approved in advance by Proskauer.

Information subject to the procedures

The range of information (the ***Relevant Information***) that is subject to these procedures is extremely wide. Relevant Information includes not only information that relates specifically to the Offering or that is intended to encourage, either directly or indirectly, interest in the Offering, but also information

that relates to the business, assets, liabilities, profits, losses, financial position**[, investment portfolio]** or prospects of the Company if that information is reasonably likely to, or is intended to, influence a person in deciding whether to buy the Company's securities (whether or not there is an intention that it should have that effect). Relevant Information may be a statement of fact or of opinion, as well as a forecast or an estimate. Any marketing tools, other than routine product and service advertising, that may be used, whether in the context of the Offering or otherwise are, therefore, subject to these procedures.

The need to monitor the release of Relevant Information extends to all forms in which it may be released, including the following:

- radio, television, newspaper and magazine (in each case, both by way of paid advertising and the giving of interviews)
- press releases, press conferences, brochures, videos, CD-ROMs, fact sheets, posters and general image or corporate brand advertisements
- telephone calls, presentations, speeches, meetings (including roadshow meetings), responses to enquiries and other dealings with the press, analysts and other professionals
- online information (such as information and hyperlinks posted on the Company's websites)
- generally distributed internal communications (such as postings on the Company's intranet, client communications and marketing initiatives)
- general promotional, employee, customer or supplier communications
- internal newspapers or magazines
- materials currently in the public domain (such as financial statements)
- any other means of disclosing information that concerns the Offering or may contain other Relevant Information.

Permissible routine activities

These guidelines are not intended to prohibit routine activities for a purpose other than inducing the purchase or sale of the Company's securities, such as routine advertising and corporate communications. The test is whether the activities would primarily serve a legitimate business purpose and would not publicize the Offering.

To qualify as routine, the activities must be carried out in the ordinary course of business, be consistent with past practice and have a normal character and content. The rule against new practices means that advertising and corporate communications should not be initiated or increased substantially above past levels, extended into new jurisdictions or disseminated other than through normally-employed channels.

Routine advertising and corporate communications should contain no Relevant Information, unless and until, it has been cleared in advance as described in this memorandum.

In general, the Company may continue to engage in the following routine activities, subject to the rules above:

- advertising specific products and services in the normal course of business, consistent with past practice

- publishing and sending out routine shareholder communications (such as dividend and meeting notices)

- communicating factual information that has already been made public by way of a press release or other formal announcement in response to unsolicited enquiries from shareholders, analysts, the press and other persons with a legitimate interest in the Company's affairs.

So-called corporate "image" or "brand" advertising (which has the effect of promoting the Company rather than specific products or services) raises special concerns since it may be viewed as an attempt to condition the market for the Company's shares. If the Company has an established practice of using such advertising, then the risks of merely continuing that practice might be limited. Any changes in advertising practice should be discussed in advance with Proskauer.

Enquiries about this memorandum

Any enquiries about this memorandum should be addressed to Simon J. Wood **(SWood@proskauer.com)**.

Appendix 1

PROCEDURES FOR MARKETING AND PUBLICITY OF THE OFFERING

Application of the procedures

Unless otherwise noted, the procedures have immediate effect and will be in place until 40 calendar days from the commencement of the Offering, which is typically the day the Offering is priced. The procedures apply to all Offering Participants.

Awareness of the procedures

All relevant staff of the Offering Participants must be aware of the procedures and the legal restrictions relating to the release of Relevant Information. In particular, personnel of the Company **[or the Investment Manager]** who are likely to be approached by the press or by securities analysts must be familiar with the procedures, and they should make no statement about the Offering or statement constituting Relevant Information without the approval of Proskauer. A brief note substantially in the form of Appendix 2 should be circulated to all employees of the Company, once the Offering is announced. A brief note substantially in the form of Appendix 3 should be circulated to all directors, managers and relevant public relations officers.

Designation of responsible persons

Each Offering Participant should designate a person within its organization who will be responsible for the control of publicity and the release of information (a ***Responsible Person***). Any release that could possibly be viewed as containing Relevant Information should be channeled through that Responsible Person. If a Responsible Person believes that a release contains Relevant Information, or is uncertain whether it contains Relevant Information, he or she should send drafts of such release to Proskauer as far in advance as possible with a clear indication of how soon comments are required.

Review and approval of publicity

All publicity materials must be reviewed first by designated personnel of the relevant Offering Participant and should comply with all internal controls currently in place to ensure accuracy.

All publicity materials must then be submitted for review in draft form to Proskauer sufficiently prior to its intended date of release to enable comments to be incorporated. No publicity materials should be released until they have been cleared by Proskauer.

No amendment to approved Relevant Information (whether by addition or deletion) may be made without approval in accordance with these procedures.

Legends

Any press release or other written press-related material containing Relevant Information (whether or not it specifically references the Offering) should ***not*** be distributed in the United States. The first page of any such document must bear the following general legend:

> NOT FOR RELEASE, PUBLICATION OR DISTRIBUTION, DIRECTLY OR INDIRECTLY, IN THE UNITED STATES, CANADA OR JAPAN.

Any such document must also contain the following legend:

> This announcement is not for publication or distribution, directly or indirectly, in or into the United States of America. This announcement is not an offer of

securities for sale into the United States. The securities referred to herein have not been and will not be registered under the U.S. Securities Act of 1933, as amended, and may not be offered or sold in the United States, except pursuant to an applicable exemption from registration. No public offering of securities is being made in the United States.

It may be necessary to make further statements, disclosures or warnings depending on the content and context of the particular announcement. In addition, the Bookrunner may from time to time require additional legends to be included with respect to certain press announcements. Proskauer should be consulted prior to the distribution of any document to ensure that the appropriate legends are included.

No press release or other written press-related materials containing Relevant Information may contain or attach any form of purchase order or coupon that may be returned to express an interest in the Offering.

Quality of information

Relevant Information (including responses to general business enquiries) should comply with the following:

- All information must be true and accurate and not misleading (whether by omission of information, inclusion of misleading information or misleading presentation of information).

- Predictions, projections or forecasts regarding the Company's financial performance or the value of the Company or the Shares must not be made. In addition, claims, predictions, forecasts and opinions relating more generally to the Company must be avoided as these are often difficult to substantiate and can subject the Company and others to undue risk (forward-looking statements, such as predictions, are often subject to a number of factors, many of which can be beyond the Company's control.

- Nothing should be published that contradicts or may contradict anything to be included in the Offering Document or that supplements it by adding material information that will not be set out or is not set out in the Offering Document (for example, information about the Company or the Company, the business, securities or relevant markets).

Persons who submit publicity with Relevant Information for approval should be prepared to demonstrate, with supporting evidence, that the Relevant Information is true and accurate and not misleading.

Distribution of publicity

Subject to compliance with these procedures, publicity may be distributed outside of the United States (subject to any restrictions under local laws). However, no publicity with Relevant Information may be released, published or distributed in or into Australia, Canada Hong Kong, Japan, New Zealand, Singapore or South Africa without first consulting Proskauer.

U.S. distribution of offering materials only to QIBs

No offering material should be sent into or distributed within the United States **[or to any U.S. Person]**, except by the Bookrunner and only to recipients that are **[both]** QIBs **[and QPs]**.

No meeting other than roadshow

No informational or promotional meetings, seminars or conferences (other than industry conferences that are conducted on a basis consistent with prior practice and where ***no*** mention of the Offering is made) should be held, unless cleared in advance by Proskauer, except for roadshow meetings held under the direct supervision of the Bookrunner. If such meetings take place in the United States, only **[QIBs][potential investors that are both QIBs and QPs]** may attend. **[If they take place outside the United Stated, any attendees that are U.S. Persons must be both QIBs and QPs.]**

Following preparation of the preliminary offering document, comments and remarks made in roadshow meetings or other meetings with potential investors should generally be limited to the information contained in the preliminary offering document. In particular, Offering Participants should avoid statements involving predictions, projections or forecasts concerning the Company's financial performance or opinions regarding the value of the Company or the Company's shares.

No copy of slides or any other written materials should be made available during the roadshow meetings to those attending.

Press conferences

No press conference in the United States. The Company may ***not*** hold any form of press conference relating to the Offering or at which Relevant Information is discussed in the United States.

Press conferences outside the United States. The Company may invite both the non-U.S. and U.S. press to its press conferences outside the United States, if all contact occurs outside the United States and non-U.S. journalists also have access to the press conference. No person located in the United States may participate in a press conference or presentation outside the United States (for instance, by telephone, video, internet or other means), and ***no*** follow-up contacts may occur with a person (whether or not a U.S. or non-U.S. journalist) located in the United States. This does not preclude one-on-one interviews or meetings with a U.S. journalist outside the United States, provided that separate opportunities are also made available to non-U.S. journalists, either in separate one-on-one meetings or in a press conference held within a reasonably short time before or after such interviews or meetings, that both U.S. and non-U.S. journalists are allowed to attend.

Proskauer must be informed of any press conferences or presentations outside the United States. Any such press conferences or presentations may only take place following advice from Proskauer as to what may or may not be said, circulated or displayed. The Company must also prepare in advance of a press conference a script of answers to questions that may reasonably be asked. This script must be approved in accordance with these procedures. Any materials circulated in connection with a press conference must also be so approved.

Distribution of written materials. Any proposal to distribute written materials at a press conference must be approved in advance by Proskauer. Such materials will be vetted in accordance with these procedures. Any such materials, if mailed or delivered to the journalists, must be sent to a physical location and address outside the United States. The materials also must bear the appropriate legends.

Press releases

Press releases should be issued only after they have been approved in accordance with these procedures. Press releases issued outside the United States may be disseminated to the press as long as they are mailed or delivered to a physical location and address outside the United States, and they are ***not*** disseminated directly by the Company or any Offering Participant within the United States. Press releases must bear the appropriate legends.

The Company may continue to publish such information as it may require for the furtherance of its legitimate business purposes, including the issuance of press releases consistent with past practice, provided always that such information does ***not*** disclose the Company's prospects, future financial or operating results.

Advertisements

Advertisements (other than routine product and service advertisements) may ***not*** be placed in the U.S. press. Such advertisements may be placed in the (i) non-U.S. press and/or (ii) the non-U.S. editions of a U.S. publication, but only if the publication agrees in writing to print such advertisements only in its non-U.S. editions. Any proposed advertisement should first be approved by Proskauer.

Oral and written enquiries regarding the Offering

Oral and written enquiries for information about the Offering from the public, institutions, potential investors and the media should be dealt with by personnel who have been educated on the legal implications of the marketing and publicity surrounding the Offering and who have received a copy of this memorandum. Such personnel should respond as briefly as possible, using a prepared script that is limited to information that has already been made public by way of a press release or other formal announcement.

No comment should be made in the United States about the Offering by any of the Offering Participants. No telephone conversation regarding the Offering should be initiated with, or accepted from, any person in the United States. Any person contacting any of the Offering Participants about the Offering should be asked if he/she is calling from the United States, unless the recipient knows otherwise. If the caller is not in the United States, the enquiry should be treated in accordance with these procedures. If the caller is in the United States, the call should be referred to a designated contact at the relevant Offering Participant, who should respond "no comment".

Restriction on contact with securities analysts

The Company may cooperate with the Bookrunner in the preparation of research reports, subject to the guidelines set forth in a separate memorandum regarding research reports.

The Company should not cooperate in the preparation of research reports with any other securities firm (other than the Bookrunner) without advance clearance from Proskauer.

The internet

The information on the Company's internet sites creates certain risks under securities laws because of the global access to such information. For these purposes, information available or accessible via hyper-links is considered a part of an internet site. Accordingly, the existing content of the internet sites of the Company should be carefully reviewed. In addition, no employee or representative of the Company should establish a new website or expand the scope of its existing internet site without advance clearance from Proskauer.

The Company may continue to use its websites in a manner consistent with past practice for ordinary course corporate communications and product marketing and advertising, but may not launch or expand a corporate profile or image campaign without first having the content reviewed in accordance with these procedures. The Company must ensure the following:

- information appearing on any website maintained by or on behalf of the Company (i) is reviewed before it is posted on the internet site, (ii) could not be construed as conditioning the

market or arousing public interest in the Company, the Shares or otherwise containing Relevant Information and (iii) does not relate to any aspect of the Offering

- information that is no longer factually correct, any Offering-related information, information about past and future performance and analysis of business trends or uncertainties or financial conditions affecting the Company's business is removed from the internet site.

Particular care must be taken with respect to hyper-links: information accessible via hyper-links from the websites of the Company could be viewed as having been approved or adopted by the Company itself. It is essential to avoid any hyper-links on the websites of the Company to the websites of any brokers that cover the Company or to any analyst's report (or the posting on such websites of any such reports themselves), because the Company may be viewed as adopting the report and may become responsible for its contents. Care should be taken with respect to any other hyper-links. Where used, such hyper-links should be accompanied by an express disclaimer that the link is to the website of a third party not affiliated with the Company, and that the opinions, beliefs and other information appearing on such internet site is not adopted, approved or affirmed by the Company. No hyper-links should be used without advance clearance from Proskauer, and any websites accessible via hyper-link will need to be regularly monitored for content. In addition, nothing should be disclosed on the Company's website that may be considered inconsistent with information to be disclosed in the Offering Document or that the Company would not be willing to include in the Offering Document.

The Company's business related communications on the Internet, and also Internet communications in the nature of "institutional" advertising, should be reviewed to eliminate hyperbole and to establish consistency with normal advertising policy.

The Company's Internet-transmitted communications should be examined to identify and to consider retention or temporary deletion of the following:

- Offering-related information
- business forecasts
- projections of financial information
- analysis of business trends or uncertainties.

All information on the website should be reviewed regularly, dated, evaluated for accuracy and relevance, and removed as it becomes inaccurate or irrelevant.

The Company should consult with Proskauer if any information inconsistent with these guidelines cannot be deleted from the Company's website.

No offering material or press releases relating to the Offering (including the Offering Document) may be posted on the internet, unless approved by, and advice and clearance has been obtained from, Proskauer.

None of the Company ***or*** any other Offering Participant ***or*** any of their employees may discuss the Offering on, or post Offering related information to, any website ***or*** blog ***or*** social media platform such as Twitter, LinkedIn or Facebook. This prohibition extends to any postings in a personal capacity.

The Company's website should ***not*** include any research reports or contain hyperlinks to research reports.

There is a separate memo that contains instructions for putting in place a gatepost.

Appendix 2

RELEASE OF INFORMATION

For issue to all non-U.S. employees of the Company [and the Selling Shareholder] at the appropriate time

You will now be aware of the proposed Offering. In connection with the Offering, it is now important for legal reasons that everyone associated with the Company, including all employees of the Company, be careful about what he or she says about the Company and its business.

Failure to abide by the guidelines below may jeopardize the Offering.

It is possible that before the Offering you may be asked questions about our plans or about the Company generally. There are legal constraints about what you may say about these matters. It is important, therefore, that you observe the guidelines set out below:

- If you are asked any questions about the Offering or about the Company generally, you should explain that you are not able to comment. Decline to answer any such questions and suggest that any such questions be directed to **[*Responsible Person*]**.

- If you receive any correspondence enquiring about the Offering you should refer it to **[*Responsible Person*]**.

- You should remember that information on the Company that you receive as an employee is confidential, and you should not discuss with anyone outside the Company any commercial information that in any way has a bearing on the Company's current or future trading, profitability, investment plans or financial position.

- Do ***not*** post any information about the Offering on a social media platform, such as LinkedIn or Facebook.

Appendix 3

GUIDELINES FOR DIRECTORS, SHAREHOLDERS AND AFFILIATES

In connection with the Offering, there are broad legal restrictions that govern the type of information that can be released, the timing of its release and the form in which it is to be released that are customarily observed until 40 days from the commencement of the Offering, which is typically the day the Offering is priced.

Among the most significant requirements are the following:

General Solicitation/General Advertising/Directed Selling Efforts: No offer or sale of the Company's shares may be made through general solicitation, general advertising or directed selling efforts in the United States. General solicitation, general advertising and directed selling efforts have broad definitions, and the failure of this condition could lead to the loss of potentially applicable exemptions from registration in the United States.

Offering document: The offering document must contain all information that a potential investor would reasonably require to make an informed investment decision. The release of information that is inaccurate, misleading or inconsistent with the offering document must be avoided: it may cast doubt on the accuracy of the offering document, which could result in claims against the Company, its directors and officers and/or other participants in the Offering. A central concern when releasing information of any kind is, therefore, that it should be verifiably accurate and consistent with the offering document.

The following procedures have immediate effect. If there is any doubt about their application, Proskauer should be consulted.

Review of publicity

All information, in whatever form, that relates in any way to the Offering or that could be regarded as capable of influencing prospective investors must be reviewed and cleared by Proskauer.

Quality of information

All such information, including responses to general business enquiries, should meet the following guidelines:

- All information must be true and accurate and not misleading (whether by omission of information, inclusion of misleading information or misleading presentation of information);

- Predictions, projections or forecasts regarding the Company's financial performance or the value of the Company, or the shares must not be made. In addition, claims, predictions, forecasts and opinions relating more generally to the Company must be avoided: these are often difficult to substantiate and can subject the Company and others to undue risk (forward-looking statements, such as predictions, are often subject to a number of factors, many of which can be beyond the control of the Company).

- Nothing should be published that contradicts or may contradict anything in the offering document.

Advertisement

Any advertisements must be reviewed and cleared by Proskauer before they are placed.

Contact with press

You should ***not*** solicit or respond to media coverage without the express prior consent of Proskauer.

Contact with securities analysts

The Company should not cooperate in the preparation of research reports with any securities firm (other than **[*the Bookrunner*]**) and should not provide projections or forecasts or other information not of a purely factual nature to any securities firm engaged in the preparation of research reports.

Regulations D, E, and CE

Including Rules 500, 601, 701, 800 and 1001

Under the Securities Act of 1933

A *Red Box*® Service Publication

Wolters Kluwer

REGULATION D

RULES GOVERNING THE LIMITED OFFER AND SALE OF SECURITIES WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933

Rule 500. Use of Regulation D.

Users of Regulation D (§§ 230.500 *et seq*.) should note the following:

(a) Regulation D relates to transactions exempted from the registration requirements of Section 5 of the Securities Act of 1933 (the "Act") (15 U.S.C. 77a *et seq*., as amended). Such transactions are not exempt from the antifraud, civil liability, or other provisions of the federal securities laws. Issuers are reminded of their obligation to provide such further material information, if any, as may be necessary to make the information required under Regulation D, in light of the circumstances under which it is furnished, not misleading.

(b) Nothing in Regulation D obviates the need to comply with any applicable state law relating to the offer and sale of securities. Regulation D is intended to be a basic element in a uniform system of federal-state limited offering exemptions consistent with the provisions of Sections 18 and 19(c) of the Act (15 U.S.C. 77r and 77(s)(c)). In those states that have adopted Regulation D, or any version of Regulation D, special attention should be directed to the applicable state laws and regulations, including those relating to registration of persons who receive remuneration in connection with the offer and sale of securities, to disqualification of issuers and other persons associated with offerings based on state administrative orders or judgments, and to requirements for filings of notices of sales.

(c) Attempted compliance with any rule in Regulation D does not act as an exclusive election; the issuer can also claim the availability of any other applicable exemption. For instance, an issuer's failure to satisfy all the terms and conditions of Rule 506(b) (§ 230.506(b)) shall not raise any presumption that the exemption provided by section 4(a)(2) of the Act (15 U.S.C. 77d(2)) is not available.

(d) Regulation D is available only to the issuer of the securities and not to any affiliate of that issuer or to any other person for resales of the issuer's securities. Regulation D provides an exemption only for the transactions in which the securities are offered or sold by the issuer, not for the securities themselves.

(e) Regulation D may be used for business combinations that involve sales by virtue of Rule 145(a) (§ 230.145(a)) or otherwise.

(f) In view of the objectives of Regulation D and the policies underlying the Act, Regulation D is not available to any issuer for any transaction or chain of transactions that, although in technical compliance with Regulation D, is part of a plan or scheme to evade the registration provisions of the Act. In such cases, registration under the Act is required.

(g) Securities offered and sold outside the United States in accordance with §§ 230.901 through 230.905 (Regulation S) need not be registered under the Act. See Release No. 33-6863. Regulation S may be relied on for such offers and sales even if coincident offers and sales are made in accordance with Regulation D inside the United States. See § 230.152(b)(2). Thus, for example, persons who are offered and sold securities in accordance with Regulation S would not be counted in the calculation of the number of purchasers under Regulation D. Similarly, proceeds from such sales would not be included in the aggregate offering price. The provisions of this paragraph (g), however, do not apply if the issuer elects to rely solely on Regulation D for offers or sales to persons made outside the United States. See §§ 230.502(a) and 230.152.

Rule 501. Definitions and Terms Used in Regulation D.

As used in Regulation D (§ 230.500 *et seq.* of this chapter), the following terms shall have the meaning indicated:

(a) *Accredited Investor.* "Accredited investor" shall mean any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:

(1) Any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any investment adviser registered pursuant to section 203 of the Investment Advisers Act of 1940 or registered pursuant to the laws of a state; any investment adviser relying on the exemption from registering with the Commission under section 203(*l*) or (m) of the Investment Advisers Act of 1940; any insurance company as defined in section 2(a)(13) of the Act; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that act; any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958; any Rural Business Investment Company as defined in section 384A of the Consolidated Farm and Rural Development Act; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of $5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

(2) Any private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940;

(3) Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, partnership, or limited liability company, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5,000,000;

(4) Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;

(5) Any natural person whose individual net worth, or joint net worth with that person's spouse or spousal equivalent, exceeds $1,000,000;

(i) Except as provided in paragraph (a)(5)(ii) of this section, for purposes of calculating net worth under this paragraph (a)(5):

(A) The person's primary residence shall not be included as an asset;

(B) Indebtedness that is secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time of the sale of securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of sale of securities exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and

(C) Indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the primary residence at the time of the sale of securities shall be included as a liability;

(ii) Paragraph (a)(5)(i) of this section will not apply to any calculation of a person's net worth made in connection with a purchase of securities in accordance with a right to purchase such securities, provided that:

(A) Such right was held by the person on July 20, 2010;

(B) The person qualified as an accredited investor on the basis of net worth at the time the person acquired such right; and

(C) The person held securities of the same issuer, other than such right, on July 20, 2010.

Note 1 to Paragraph (a)(5): For the purposes of calculating joint net worth in this paragraph (a)(5): Joint net worth can be the aggregate net worth of the investor and spouse or spousal equivalent; assets need not be held jointly to be included in the calculation. Reliance on the joint net worth standard of this paragraph (a)(5) does not require that the securities be purchased jointly.

(6) Any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse or spousal equivalent in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(7) Any trust, with total assets in excess of $5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in Rule 506(b)(2)(ii);

(8) Any entity in which all of the equity owners are accredited investors;

Note 1 to Paragraph (a)(8): It is permissible to look through various forms of equity ownership to natural persons in determining the accredited investor status of entities under this paragraph (a)(8). If those natural persons are themselves accredited investors, and if all other equity owners of the entity seeking accredited investor status are accredited investors, then this paragraph (a)(8) may be available.

(9) Any entity, of a type not listed in paragraphs (a)(1), (2), (3), (7), or (8), not formed for the specific purpose of acquiring the securities offered, owning investments in excess of $5,000,000;

Note 1 to Paragraph (a)(9): For the purposes [*sic*] this paragraph (a)(9), "investments" is defined in rule 2a51-1(b) under the Investment Company Act of 1940 (17 CFR 270.2a51-1(b)).

(10) Any natural person holding in good standing one or more professional certifications or designations or credentials from an accredited educational institution that the Commission has designated as qualifying an individual for accredited investor status. In determining whether to designate a professional certification or designation or credential from an accredited educational institution for purposes of this paragraph (a)(10), the Commission will consider, among others, the following attributes:

(i) The certification, designation, or credential arises out of an examination or series of examinations administered by a self-regulatory organization or other industry body or is issued by an accredited educational institution;

(ii) The examination or series of examinations is designed to reliably and validly demonstrate an individual's comprehension and sophistication in the areas of securities and investing;

(iii) Persons obtaining such certification, designation, or credential can reasonably be expected to have sufficient knowledge and experience in financial and business matters to evaluate the merits and risks of a prospective investment; and

(iv) An indication that an individual holds the certification or designation is either made publicly available by the relevant self-regulatory organization or other industry body or is otherwise independently verifiable;

Note 1 to Paragraph (a)(10): The Commission will designate professional certifications or designations or credentials for purposes of this paragraph (a)(10), by order, after notice and an opportunity for public comment. The professional certifications or designations or credentials currently recognized by the Commission as satisfying the above criteria will be posted on the Commission's website.

(11) Any natural person who is a "knowledgeable employee," as defined in rule 3c-5(a)(4) under the Investment Company Act of 1940 (17 CFR 270.3c-5(a)(4)), of the issuer of the securities being offered or sold where the issuer would be an investment company, as defined in section 3 of such act, but for the exclusion provided by either section 3(c)(1) or section 3(c)(7) of such act;

(12) Any "family office," as defined in rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940 (17 CFR 275.202(a)(11)(G)-1):

(i) With assets under management in excess of $5,000,000,

(ii) That is not formed for the specific purpose of acquiring the securities offered, and

(iii) Whose prospective investment is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective investment; and

(13) Any "family client," as defined in rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940 (17 CFR 275.202(a)(11)(G)-1)), of a family office meeting the requirements in paragraph (a)(12) of this section and whose prospective investment in the issuer is directed by such family office pursuant to paragraph (a)(12)(iii).

(b) *Affiliate.* An "affiliate" of, or person "affiliated" with, a specified person shall mean a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

(c) *Aggregate Offering Price.* "Aggregate offering price" shall mean the sum of all cash, services, property, notes, cancellation of debt, or other consideration to be received by an issuer for issuance of its securities. Where securities are being offered for both cash and non-cash consideration, the aggregate offering price shall be based on the price at which the securities are offered for cash. Any portion of the aggregate offering price attributable to cash received in a foreign currency shall be translated into United States currency at the currency exchange rate in effect at a reasonable time prior to or on the date of the sale of the securities. If securities are not offered for cash, the aggregate offering price shall be based on the value of the consideration as established by *bona fide* sales of that consideration made within a reasonable time, or, in the absence of sales, on the fair value as determined by an accepted standard. Such valuations of non-cash consideration must be reasonable at the time made.

(d) *Business Combination.* "Business combination" shall mean any transaction of the type specified in paragraph (a) of Rule 145 under the Act and any transaction involving the acquisition by one issuer, in exchange for all or a part of its own or its parent's stock, of stock of another issuer if, immediately after the acquisition, the acquiring issuer has control of the other issuer (whether or not it had control before the acquisition).

(e) *Calculation of Number of Purchasers.* For purposes of calculating the number of purchasers under § 230.506(b) only, the following shall apply:

(1) The following purchasers shall be excluded:

(i) Any relative, spouse or relative of the spouse of a purchaser who has the same primary residence as the purchaser;

(ii) Any trust or estate in which a purchaser and any of the persons related to him as specified in paragraph (e)(1)(i) or (e)(1)(iii) of this section collectively have more than 50 percent of the beneficial interest (excluding contingent interests);

(iii) Any corporation or other organization of which a purchaser and any of the persons related to him as specified in paragraph (e)(1)(i) or (e)(1)(ii) of this section collectively have more than 50 percent of the beneficial interest of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests; and

(iv) Any accredited investor.

(2) A corporation, partnership or other entity shall be counted as one purchaser. If, however, that entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor under paragraph (a)(8) of this section, then each beneficial owner of equity securities or equity interests in the entity shall count as a separate purchaser for all provisions of Regulation D (§§ 230.501 to 230.508), except to the extent provided in paragraph (e)(1) of this section.

(3) A non-contributory employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 shall be counted as one purchaser where the trustee makes all investment decisions for the plan.

Note. The issuer must satisfy all the other provisions of Regulation D for all purchasers whether or not they are included in calculating the number of purchasers. Clients of an investment adviser or customers of a broker or dealer shall be considered the "purchasers" under Regulation D regardless of the amount of discretion given to the investment adviser or broker or dealer to act on behalf of the client or customer.

(f) *Executive Officer. Executive officer* shall mean the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function, or any other person who performs similar policy making function for the issuer. Executive officers of subsidiaries may be deemed executive officers of the issuer if they perform such policy making functions for the issuer.

(g) *Final Order. Final order* shall mean a written directive or declaratory statement issued by a federal or state agency described in § 230.506(d)(1)(iii) under applicable statutory authority that provides for notice and an opportunity for hearing, which constitutes a final disposition or action by that federal or state agency.

(h) *Issuer.* The definition of the term *issuer* in section 2(a)(4) of the Act shall apply, except that in the case of a proceeding under the Federal Bankruptcy Code (11 U.S.C. 101 *et seq.*), the trustee or debtor in possession shall be considered the issuer in an offering under a plan of reorganization, if the securities are to be issued under the plan.

(i) *Purchaser Representative. Purchaser representative* shall mean any person who satisfies all of the following conditions or who the issuer reasonably believes satisfies all of the following conditions:

(1) Is not an affiliate, director, officer or other employee of the issuer, or beneficial owner of 10 percent or more of any class of the equity securities or 10 percent or more of the equity interest in the issuer, except where the purchaser is:

(i) A relative of the purchaser representative by blood, marriage or adoption and not more remote than a first cousin;

*(ii) A trust or estate in which the purchaser representative and any persons related to him as specified in paragraph (h)(1)(i) or (h)(1)(iii) [*sic*] of this section collectively have more than 50 percent of the beneficial interest (excluding contingent interest) or of which the purchaser representative serves as trustee, executor, or in any similar capacity; or

**(iii) A corporation or other organization of which the purchaser representative and any persons related to him as specified in paragraph (h)(1)(i) or (h)(1)(ii) [*sic*] of this section collectively are the beneficial owners of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests;

(2) Has such knowledge and experience in financial and business matters that he is capable of evaluating, alone, or together with other purchaser representatives of the purchaser, or together with the purchaser, the merits and risks of the prospective investment;

(3) Is acknowledged by the purchaser in writing, during the course of the transaction, to be his purchaser representative in connection with evaluating the merits and risks of the prospective investment; and

(4) Discloses to the purchaser in writing a reasonable time prior to the sale of securities to that purchaser any material relationship between himself or his affiliates and the issuer or its affiliates that then exists, that is mutually understood to be contemplated, or that has existed at any time during the previous two years, and any compensation received or to be received as a result of such relationship.

(j) *Spousal Equivalent.* The term *spousal equivalent* shall mean a cohabitant occupying a relationship generally equivalent to that of a spouse.

Note 1 to § 230.501. A person acting as a purchaser representative should consider the applicability of the registration and antifraud provisions relating to brokers and dealers under the Securities Exchange Act of 1934 (*Exchange Act*) (15 U.S.C. 78a *et seq.*, as amended), and relating to investment advisers under the Investment Advisers Act of 1940.

****Note 2 to § 230.501.* The acknowledgment required by paragraph (h)(3) [*sic*] and the disclosure required by paragraph (h)(4) [*sic*] of this section must be made with specific reference to each prospective investment. Advance blanket acknowledgment, such as for *all securities transactions* or *all private placements,* is not sufficient.

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*Cross-references in paragraph (i)(1)(ii) to (h)(1)(i) and (h)(1)(iii) should probably read (i)(1)(i) and (i)(1)(iii); the SEC did not update these cross-references when it added a new paragraph (g) and redesignated paragraph (h) as paragraph (i) in SEC Release No. 33-9414; July 10, 2013.

**Cross-references in paragraph (i)(1)(iii) to (h)(1)(i) and (h)(1)(ii) should probably read (i)(1)(i) and (i)(1)(ii); the SEC did not update these cross-references when it added a new paragraph (g) and redesignated paragraph (h) as paragraph (i) in SEC Release No. 33-9414; July 10, 2013.

***Cross-references in *Note 2 to § 230.501* to (h)(3) and (h)(4) should probably read (i)(3) and (i)(4); the SEC did not update these cross-references when it added a new paragraph (g) and redesignated paragraph (h) as paragraph (i) in SEC Release No. 33-9414; July 10, 2013.

Note 3 to § 230.501. Disclosure of any material relationships between the purchaser representative or his affiliates and the issuer or its affiliates does not relieve the purchaser representative of his obligation to act in the interest of the purchaser.

Rule 502. General Conditions to Be Met.

The following conditions shall be applicable to offers and sales made under Regulation D (§ 230.500 *et seq.* of this chapter):

(a) *Integration.* To determine whether offers and sales should be integrated, please see § 230.152.

(b) *Information Requirements.*

(1) *When Information Must Be Furnished.* If the issuer sells securities under § 230.506(b) to any purchaser that is not an accredited investor, the issuer shall furnish the information specified in paragraph (b)(2) of this section to such purchaser a reasonable time prior to sale. The issuer is not required to furnish the specified information to purchasers when it sells securities under § 230.504, or to any accredited investor.

Note. When an issuer provides information to investors pursuant to paragraph (b)(1), it should consider providing such information to accredited investors as well, in view of the anti-fraud provisions of the federal securities laws.

(2) *Type of Information to Be Furnished.*

(i) If the issuer is not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser, to the extent material to an understanding of the issuer, its business and the securities being offered:

(A) *Non-Financial Statement Information.* If the issuer is eligible to use Regulation A (§ 230.251–263), the same kind of information as would be required in Part II of Form 1-A. If the issuer is not eligible to use Regulation A, the same kind of information as required in Part I of a registration statement filed under the Securities Act on the form that the issuer would be entitled to use.

(B) *Financial Statement Information.*

(*1*) *Offerings Up to $20,000,000.* The financial statement information required by paragraph (b) of Part F/S of Form 1-A. Such financial statement information must be prepared in accordance with generally accepted accounting principles in the United States (US GAAP). If the issuer is a foreign private issuer, such financial statements must be prepared in accordance with either US GAAP or International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB). If the financial statements comply with IFRS, such compliance must be explicitly and unreservedly stated in the notes to the financial statements and if the financial statements are audited, the auditor's report must include an opinion on whether the financial statements comply with IFRS as issued by the IASB.

(*2*) *Offerings Over $20,000,000.* The financial statement information required by paragraph (c) of Part F/S of Form 1-A (referenced in § 239.90 of this chapter). If the issuer is a foreign private issuer, such financial statements must be prepared in accordance with either US GAAP or IFRS as issued by the IASB. If the financial statements comply with IFRS, such compliance must be explicitly and unreservedly stated in the notes to the financial statements and the auditor's report must include an opinion on whether the financial statements comply with IFRS as issued by the IASB.

(C) If the issuer is a foreign private issuer eligible to use Form 20-F (§ 249.220f of this chapter), the issuer shall disclose the same kind of information required to be included in a registration statement filed under the Act on the form that the issuer would be entitled to use. The financial statements need be certified only to the extent required by paragraph (b)(2)(i)(B)(*1*), (*2*) or (*3*) of this section, as appropriate.

(ii) If the issuer is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser the information specified in paragraph (b)(2)(ii)(A) or (B) of this section, and in either event the information specified in paragraph (b)(2)(ii)(C) of this section:

(A) The issuer's annual report to shareholders for the most recent fiscal year, if such annual report meets the requirements of Rules 14a-3 or 14c-3 under the Exchange Act (§ 240.14a-3 or § 240.14c-3 of this chapter), the definitive proxy statement filed in connection with that annual report, and if requested by the purchaser in writing, a copy of the issuer's most recent Form 10-K (§ 249.310 of this chapter) under the Exchange Act.

(B) The information contained in an annual report on Form 10-K (§ 249.310 of this chapter) under the Exchange Act or in a registration statement on Form S-1 (§ 239.11 of this chapter) or S-11 (§ 239.18 of this chapter) under the Act or on Form 10 (§ 249.210 of this chapter) under the Exchange Act, whichever filing is the most recent required to be filed.

(C) The information contained in any reports or documents required to be filed by the issuer under Sections 13(a), 14(a), 14(c), and 15(d) of the Exchange Act since the distribution or filing of the report or registration statement specified in paragraph (A) or (B), and a brief description of the securities being offered, the use of the proceeds from the offering, and any material changes in the issuer's affairs that are not disclosed in the documents furnished.

(D) If the issuer is a foreign private issuer, the issuer may provide in lieu of the information specified in paragraph (b)(2)(ii)(A) or (B) of this section, the information contained in its most recent filing on Form 20-F or Form F-1 (§ 239.31 of this section).

(iii) Exhibits required to be filed with the Commission as part of a registration statement or report, other than an annual report to shareholders or parts of that report incorporated by reference in a Form 10-K report, need not be furnished to each purchaser that is not an accredited investor if the contents of material exhibits are identified and such exhibits are made available to a purchaser, upon his or her written request, a reasonable time before his or her purchase.

(iv) At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under § 230.506(b), the issuer shall furnish to the purchaser a brief description in writing of any material written information concerning the offering that has been provided by the issuer to any accredited investor but not previously delivered to such unaccredited purchaser. The issuer shall furnish any portion or all of this information to the purchaser, upon his written request a reasonable time prior to his purchase.

(v) The issuer shall also make available to each purchaser at a reasonable time prior to his purchase of securities in a transaction under § 230.506(b), the opportunity to ask questions and receive answers concerning the terms and conditions of the offering and to obtain any additional information which the issuer possesses or can acquire without unreasonable effort or expense that is necessary to verify the accuracy of information furnished under paragraph (b)(2)(i) or (ii) of this section.

(vi) For business combinations or exchange offers, in addition to information required by Form S-4 (17 CFR 239.25), the issuer shall provide to each purchaser at the

time the plan is submitted to security holders, or, with an exchange, during the course of the transaction and prior to sale, written information about any terms or arrangements of the proposed transactions that are materially different from those for all other security holders. For purposes of this subsection, an issuer which is not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act may satisfy the requirements of Part I.B. or C. of Form S-4 by compliance with paragraph (b)(2)(i) of this § 230.502.

(vii) At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under § 230.506(b), the issuer shall advise the purchaser of the limitations on resale in the manner contained in paragraph (d)(2) of this section. Such disclosure may be contained in other materials required to be provided by this paragraph.

(viii) At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under § 230.506(b), the issuer shall provide the purchaser with any written communication or broadcast script used under the authorization of § 230.241 within 30 days prior to such sale.

(c) *Limitation on Manner of Offering.* Except as provided in § 230.504(b)(1) or § 230.506(c), neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following:

(1) Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; and

(2) Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising;

Provided, however, that publication by an issuer of a notice in accordance with § 230.135c or filing with the 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 the delivery of written disclosure of the limitations on resale to investors in certain instances.

Rule 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 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

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Regulation S

Rules Governing Offers and Sales Made Outside the United States Without Registration Under the Securities Act of 1933

A *Red Box*® Service Publication

Wolters Kluwer
Law & Business

REGULATION S

RULES GOVERNING OFFERS AND SALES MADE OUTSIDE THE UNITED STATES WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933

Preliminary Notes

1. The following rules relate solely to the application of Section 5 of the Securities Act of 1933 (the *Act*) [15 U.S.C. 77e] and not to antifraud or other provisions of the federal securities laws.

2. In view of the objective of these rules and the policies underlying the Act, Regulation S is not available with respect to any transaction or series of transactions that, although in technical compliance with these rules, is part of a plan or scheme to evade the registration provisions of the Act. In such cases, registration under the Act is required.

3. Nothing in these rules obviates the need for any issuer or any other person to comply with the securities registration or broker-dealer registration requirements of the Securities Exchange Act (the *Exchange Act*), whenever such requirements are applicable.

4. Nothing in these rules obviates the need to comply with any applicable state law relating to the offer and sale of securities.

5. Attempted compliance with any rule in Regulation S does not act as an exclusive election; a person making an offer or sale of securities may also claim the availability of any other applicable exemption from the registration requirements of the Act. The availability of the Regulation S safe harbor to offers and sales that occur outside of the United States will not be affected by the subsequent offer and sale of these securities into the United States or to U.S. persons during the distribution compliance period, as long as the subsequent offer and sale are made pursuant to registration or an exemption therefrom under the Act.

6. Regulation S is available only for offers and sales of securities outside the United States. Securities acquired overseas, whether or not pursuant to Regulation S, may be resold in the United States only if they are registered under the Act or an exemption from registration is available.

7. Nothing in these rules precludes access by journalists for publications with a general circulation in the United States to offshore press conferences, press releases and meetings with company press spokespersons in which an offshore offering or tender offer is discussed, provided that the information is made available to the foreign and United States press generally and is not intended to induce purchases of securities by persons in the United States or tenders of securities by United States holders in the case of exchange offers. Where applicable, issuers and bidders may also look to § 230.135e and § 240.14d-1(c) of this chapter.

8. The provisions of this Regulation S shall not apply to offers and sales of securities issued by open-end investment companies or unit investment trusts registered or required to be registered or closed-end investment companies required

to be registered, but not registered, under the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq.*] (the *1940 Act*).

Rule 901. General Statement.

For the purposes only of Section 5 of the Act [15 U.S.C. § 77e], the terms "offer," "offer to sell," "sell," "sale," and "offer to buy" shall be deemed to include offers and sales that occur within the United States and shall be deemed not to include offers and sales that occur outside the United States.

Rule 902. Definitions.

As used in Regulation S, the following terms shall have the meanings indicated.

(a) *Debt Securities.* "Debt securities" of an issuer is defined to mean any security other than an equity security as defined in § 230.405, as well as the following:

(1) Non-participatory preferred stock, which is defined as 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; and

(2) Asset-backed securities, which are securities of a type that either:

(i) Represent 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

(ii) Are 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 (a)(2)(i) of this section, or certificates of interest or participations in assets meeting such requirements.

(iii) For purposes of paragraph (a)(2) 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.

(b) *Designated Offshore Securities Market.* "Designated offshore securities market" means:

(1) The Eurobond market, as regulated by the International Securities Market Association; the Alberta Stock Exchange; the Amsterdam Stock Exchange; the Australian Stock Exchange Limited; the Bermuda Stock Exchange; the Bourse de Bruxelles; the Copenhagen Stock Exchange; the European Association of Securities Dealers Automated Quotation; the Frankfurt Stock Exchange; the Helsinki Stock Exchange; The Stock Exchange of Hong Kong Limited; the Irish Stock Exchange; the Istanbul Stock Exchange; the Johannesburg Stock Exchange; the London Stock Exchange; the Bourse de Luxembourg; the Mexico Stock Exchange; the Borsa Valori di Milan; the Montreal Stock Exchange; the Oslo Stock Exchange; the Bourse de Paris; the Stock Exchange of Singapore Ltd.; the Stockholm Stock Exchange; the Tokyo Stock Exchange; the Toronto Stock Exchange; the Vancouver Stock Exchange; the Warsaw Stock Exchange and the Zurich Stock Exchange; and

(2) Any foreign securities exchange or non-exchange market designated by the Commission. Attributes to be considered in determining whether to designate an offshore securities market, among others, include:

(i) Organization under foreign law;

(ii) Association with a generally recognized community of brokers, dealers, banks, or other professional intermediaries with an established operating history;

(iii) Oversight by a governmental or self-regulatory body;

(iv) Oversight standards set by an existing body of law;

(v) Reporting of securities transactions on a regular basis to a governmental or self-regulatory body;

(vi) A system for exchange of price quotations through common communications media; and

(vii) An organized clearance and settlement system.

(c) *Directed Selling Efforts.*

(1) "Directed selling efforts" means any activity undertaken for the purpose of, or that could reasonably be expected to have the effect of, conditioning the market in the United States for any of the securities being offered in reliance on this Regulation S (§ 230.901 through § 230.905, and Preliminary Notes). Such activity includes placing an advertisement in a publication "with a general circulation in the United States" that refers to the offering of securities being made in reliance upon this Regulation S.

(2) Publication "with a general circulation in the United States":

(i) Is defined as any publication that is printed primarily for distribution in the United States, or has had, during the preceding twelve months, an average circulation in the United States of 15,000 or more copies per issue; and

(ii) Will encompass only the U.S. edition of any publication printing a separate U.S. edition if the publication, without considering its U.S. edition, would not constitute a publication with a general circulation in the United States.

(3) The following are not "directed selling efforts":

(i) Placing an advertisement required to be published under U.S. or foreign law, or under rules or regulations of a U.S. or foreign regulatory or self-regulatory authority, provided the advertisement contains no more information than legally required and includes a statement to the effect that the securities have not been registered under the Act and may not be offered or sold in the United States (or to a U.S. person, if the advertisement relates to an offering under Category 2 or 3 (paragraph (b)(2) or (b)(3)) in § 230.903) absent registration or an applicable exemption from the registration requirements;

(ii) Contact with persons excluded from the definition of "U.S. person" pursuant to paragraph (k)(2)(vi) of this section or persons holding accounts excluded from the definition of "U.S. person" pursuant to paragraph (k)(2)(i) of this section, solely in their capacities as holders of such accounts;

(iii) A tombstone advertisement in any publication with a general circulation in the United States, *provided*:

(A) The publication has less than 20% of its circulation, calculated by aggregating the circulation of its U.S. and comparable non-U.S. editions, in the United States;

(B) Such advertisement contains a legend to the effect that the securities have not been registered under the Act and may not be offered or sold in the United States (or to a U.S. person, if the advertisement relates to an offering under Category 2 or 3 (paragraph (b)(2) or (b)(3)) in § 230.903) absent registration or an applicable exemption from the registration requirements; and

(C) Such advertisement contains no more information than:

(*1*) The issuer's name;

(*2*) The amount and title of the securities being sold;

(*3*) A brief indication of the issuer's general type of business;

(*4*) The price of the securities;

(*5*) The yield of the securities, if debt securities with a fixed (non-contingent) interest provision;

(*6*) The name and address of the person placing the advertisement, and whether such person is participating in the distribution;

(*7*) The names of the managing underwriters;

(*8*) The dates, if any, upon which the sales commenced and concluded;

(*9*) Whether the securities are offered or were offered by rights issued to security holders and, if so, the class of securities that are entitled or were entitled to subscribe, the subscription ratio, the record date, the dates (if any) upon which the rights were issued and expired, and the subscription price; and

(*10*) Any legend required by law or any foreign or U.S. regulatory or self-regulatory authority;

(iv) Bona fide visits to real estate, plants or other facilities located in the United States and tours thereof conducted for a prospective investor by an issuer, a distributor, any of their respective affiliates or a person acting on behalf of any of the foregoing;

(v) Distribution in the United States of a foreign broker-dealer's quotations by a third-party system that distributes such quotations primarily in foreign countries if:

(A) Securities transactions cannot be executed between foreign broker-dealers and persons in the United States through the system; and

(B) The issuer, distributors, their respective affiliates, persons acting on behalf of any of the foregoing, foreign broker-dealers and other participants in the system do not initiate contacts with U.S. persons or persons within the United States, beyond those contacts exempted under § 240.15a-6 of this chapter;

(vi) Publication by an issuer of a notice in accordance with § 230.135 or § 230.135c;

(vii) Providing any journalist with access to press conferences held outside of the United States, to meetings with the issuer or selling security holder representatives conducted outside 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, if the requirements of § 230.135e are satisfied; and

(viii) Publication or distribution of a research report by a broker or dealer in accordance with Rule 138(c) (§ 230.138(c)) or Rule 139(b) (§ 230.139(b)).

(d) *Distributor.* "Distributor" means any underwriter, dealer, or other person who participates, pursuant to a contractual arrangement, in the distribution of the securities offered or sold in reliance on this Regulation S (§ 230.901 through § 230.905, and Preliminary Notes).

(e) *Domestic Issuer/Foreign Issuer.* "Domestic issuer" means any issuer other than a "foreign government" or "foreign private issuer" (both as defined in § 230.405). "Foreign issuer" means any issuer other than a "domestic issuer."

(f) *Distribution Compliance Period.* "Distribution compliance period" means a period that begins when the securities were first offered to persons other than distributors in reliance upon this Regulation S (§ 230.901 through § 230.905, and Preliminary Notes) or the date of closing of the offering, whichever is later, and continues until the end of the period of time specified in the relevant provision of § 230.903, except that:

(1) All offers and sales by a distributor of an unsold allotment or subscription shall be deemed to be made during the distribution compliance period;

(2) In a continuous offering, the distribution compliance period shall commence upon completion of the distribution, as determined and certified by the managing underwriter or person performing similar functions;

(3) In a continuous offering of non-convertible debt securities offered and sold in identifiable tranches, the distribution compliance period for securities in a tranche shall commence upon completion of the distribution of such tranche, as determined and certified by the managing underwriter or person performing similar functions; and

(4) That in a continuous offering of securities to be acquired upon the exercise of warrants, the distribution compliance period shall commence upon completion of the distribution of the warrants, as determined and certified by the managing underwriter or person performing similar functions, if requirements of § 230.903(b)(5) are satisfied.

(g) *Offering Restrictions.* "Offering restrictions" means:

(1) Each distributor agrees in writing:

(i) That all offers and sales of the securities prior to the expiration of the distribution compliance period specified in Category 2 or 3 (paragraph (b)(2) or (b)(3)) in § 230.903, as applicable, shall be made only in accordance with the provisions of § 230.903 or § 230.904; pursuant to registration of the securities under the Act; or pursuant to an available exemption from the registration requirements of the Act; and

(ii) For offers and sales of equity securities of domestic issuers, not to engage in hedging transactions with regard to such securities prior to the expiration of the distribution compliance period specified in Category 2 or 3 (paragraph (b)(2) or (b)(3)) in § 230.903, as applicable, unless in compliance with the Act; and

(2) All offering materials and documents (other than press releases) used in connection with offers and sales of the securities prior to the expiration of the distribution compliance period specified in Category 2 or 3 (paragraph (b)(2) or (b)(3)) in § 230.903, as applicable, shall include statements to the effect that the securities have not been registered under the Act and may not be offered or sold in the United States or to U.S. persons (other than distributors) unless the securities are registered under the Act, or an exemption from the registration requirements of the Act is available. For offers and sales of equity securities of domestic issuers, such offering materials and documents also must state that hedging transactions involving those securities may not be conducted unless in compliance with the Act. Such statements shall appear:

(i) On the cover or inside cover page of any prospectus or offering circular used in connection with the offer or sale of the securities;

(ii) In the underwriting section of any prospectus or offering circular used in connection with the offer or sale of the securities; and

(iii) In any advertisement made or issued by the issuer, any distributor, any of their respective affiliates, or any person acting on behalf of any of the foregoing. Such statements may appear in summary form on prospectus cover pages and in advertisements.

(h) *Offshore Transaction.*

(1) An offer or sale of securities is made in an "offshore transaction" if:

(i) The offer is not made to a person in the United States; and

(ii) Either:

(A) At the time the buy order is originated, the buyer is outside the United States, or the seller and any person acting on its behalf reasonably believe that the buyer is outside the United States; or

(B) For purposes of:

(*1*) Section 230.903, the transaction is executed in, on or through a physical trading floor of an established foreign securities exchange that is located outside the United States; or

(*2*) Section 203.904, the transaction is executed in, on or through the facilities of a designated offshore securities market described in paragraph (b) of this section, and neither the seller nor any person acting on its behalf knows that the transaction has been pre-arranged with a buyer in the United States.

(2) Notwithstanding paragraph (h)(1) of this section, offers and sales of securities specifically targeted at identifiable groups of U.S. citizens abroad, such as members of the U.S. armed forces serving overseas, shall not be deemed to be made in "offshore transactions."

(3) Notwithstanding paragraph (h)(1) of this section, offers and sales of securities to persons excluded from the definition of "U.S. person" pursuant to paragraph (k)(2)(vi) of this section or persons holding accounts excluded from the definition of "U.S. person" pursuant to paragraph (k)(2)(i) of this section, solely in their capacities as holders of such accounts, shall be deemed to be made in "offshore transactions."

(4) Notwithstanding paragraph (h)(1) of this section, publication or distribution of a research report in accordance with Rule 138(c) (§ 230.138(c)) or Rule 139(b) (§ 230.139(b)) by a broker or dealer at or around the time of an offering in reliance on Regulation S (§§ 230.901 through 230.905) will not cause the transaction to fail to be an offshore transaction as defined in this section.

(i) *Reporting Issuer.* "Reporting issuer" means an issuer other than an investment company registered or required to register under the 1940 Act that:

(1) Has a class of securities registered pursuant to Section 12(b) or 12(g) of the Exchange Act (15 U.S.C. 78*l*(b) or 78*l*(g)) or is required to file reports pursuant to Section 15(d) of the Exchange Act (15 U.S.C. 78*o*(d)); and

(2) Has filed all the material required to be filed pursuant to Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78*o*(d)) for a period of at least twelve months immediately preceding the offer or sale of securities made in reliance upon this Regulation S (§ 230.901 through § 230.905, and Preliminary Notes) (or for such shorter period that the issuer was required to file such material).

(j) *Substantial U.S. Market Interest.*

(1) "Substantial U.S. market interest" with respect to a class of an issuer's equity securities means:

(i) The securities exchanges and inter-dealer quotation systems in the United States in the aggregate constituted the single largest market for such class of securities in the shorter of the issuer's prior fiscal year or the period since the issuer's incorporation; or

(ii) 20 percent or more of all trading in such class of securities took place in, on or through the facilities of securities exchanges and inter-dealer quotation systems in the United States and less than 55 percent of such trading took place in, on or through the facilities of securities markets of a single foreign country in the shorter of the issuer's prior fiscal year or the period since the issuer's incorporation.

(2) "Substantial U.S. market interest" with respect to an issuer's debt securities means:

(i) Its debt securities, in the aggregate, are held of record (as that term is defined in § 240.12g5-1 of this chapter and used for purposes of paragraph (j)(2) of this section) by 300 or more U.S. persons;

(ii) $1 billion or more of: the principal amount outstanding of its debt securities, the greater of liquidation preference or par value of its securities described in § 230.902(a)(1), and the principal amount or principal balance of its securities described in § 230.902(a)(2), in the aggregate, is held of record by U.S. persons; and

(iii) 20 percent or more of: the principal amount outstanding of its debt securities, the greater of liquidation preference or par value of its securities described in § 230.902(a)(1), and the principal amount or principal balance of its securities described in § 230.902(a)(2), in the aggregate, is held of record by U.S. persons.

(3) Notwithstanding paragraph (j)(2) of this section, substantial U.S. market interest with respect to an issuer's debt securities is calculated without reference to securities that qualify for the exemption provided by Section 3(a)(3) of the Securities Act (15 U.S.C. 77c(a)(3)).

(k) *U.S. Person.*

(1) "U.S. person" means:

(i) Any natural person resident in the United States;

(ii) Any partnership or corporation organized or incorporated under the laws of the United States;

(iii) Any estate of which any executor or administrator is a U.S. person;

(iv) Any trust of which any trustee is a U.S. person;

(v) Any agency or branch of a foreign entity located in the United States;

(vi) Any non-discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary for the benefit or account of a U.S. person;

(vii) Any discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary organized, incorporated, or (if an individual) resident in the United States; and

(viii) Any partnership or corporation if:

(A) Organized or incorporated under the laws of any foreign jurisdiction; and

(B) Formed by a U.S. person principally for the purpose of investing in securities not registered under the Act, unless it is organized or incorporated, and owned, by accredited investors (as defined in § 230.501(a)) who are not natural persons, estates or trusts.

(2) The following are not "U.S. persons":

(i) Any discretionary account or similar account (other than an estate or trust) held for the benefit or account of a non-U.S. person by a dealer or other professional fiduciary organized, incorporated, or (if an individual) resident in the United States;

(ii) Any estate of which any professional fiduciary acting as executor or administrator is a U.S. person if:

(A) An executor or administrator of the estate who is not a U.S. person has sole or shared investment discretion with respect to the assets of the estate; and

(B) The estate is governed by foreign law;

(iii) Any trust of which any professional fiduciary acting as trustee is a U.S. person, if a trustee who is not a U.S. person has sole or shared investment discretion with respect to the trust assets, and no beneficiary of the trust (and no settlor if the trust is revocable) is a U.S. person;

(iv) An employee benefit plan established and administered in accordance with the law of a country other than the United States and customary practices and documentation of such country;

(v) Any agency or branch of a U.S. person located outside the United States if:

(A) The agency or branch operates for valid business reasons; and

(B) The agency or branch is engaged in the business of insurance or banking and is subject to substantive insurance or banking regulation, respectively, in the jurisdiction where located; and

(vi) The International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations, and their agencies, affiliates and pension plans, and any other similar international organizations, their agencies, affiliates and pension plans.

(l) *United States.* "United States" means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

Rule 903. Offers or Sales of Securities By the Issuer, a Distributor, Any of Their Respective Affiliates, or Any Person Acting on Behalf of Any of the Foregoing; Conditions Relating to Specific Securities.

(a) An offer or sale of securities by the issuer, a distributor, any of their respective affiliates, 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:

(1) The offer or sale is made in an offshore transaction;

(2) No directed selling efforts are made in the United States by the issuer, a distributor, any of their respective affiliates, or any person acting on behalf of any of the foregoing; and

(3) The conditions of paragraph (b) of this section, as applicable, are satisfied.

(b) *Additional Conditions.*

(1) *Category 1.* No conditions other than those set forth in § 230.903(a) apply to securities in this category. Securities are eligible for this category if: