

the security, loan, or narrow-based security index (or class of securities or loans) whose value is to be used to determine the amount of the settlement obligation under the security-based swap; and

(iii) A statement of whether the issuer of any security or loan, each issuer of a security in a narrow-based security index, or each referenced issuer underlying the security-based swap is subject to the reporting requirements of Sections 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m and 78o) and, if not subject to such reporting requirements, whether public information, including financial information, about any such issuer is available and where the information is available.

(c) The exemption provided in paragraph (a) of this section does not apply to the provisions of Section 17(a) of the Act (15 U.S.C. 77q(a)).

[77 FR 20549, Apr. 5, 2012]

§ 230.240 Exemption for certain security-based swaps.

(a) Except as expressly provided in paragraph (b) of this section, the Act does not apply to the offer or sale of any security-based swap that is:

(1) A *security-based swap agreement*, as defined in Section 2A of the Act (15 U.S.C. 77b(b)-1) as in effect prior to July 16, 2011; and

(2) Entered into between eligible contract participants (as defined in Section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(12)) as in effect prior to July 16, 2011, other than a person who is an eligible contract participant under Section 1a(12)(C) of the Commodity Exchange Act as in effect prior to July 16, 2011).

(b) The exemption provided in paragraph (a) of this section does not apply to the provisions of Section 17(a) of the Act (15 U.S.C. 77q(a)).

(c) This section will expire on February 11, 2018.

[82 FR 10707, Feb. 15, 2017]

REGULATION A—CONDITIONAL SMALL
ISSUES EXEMPTION

AUTHORITY: Secs. 230.251 to 230.263 issued under 15 U.S.C. 77c, 77s.

SOURCE: 57 FR 36468, Aug. 13, 1992, unless otherwise noted.

§ 230.251 Scope of exemption.

(a) *Tier 1 and Tier 2.* A public offer or sale of eligible securities, as defined in Rule 261 (§ 230.261), pursuant to Regulation A shall be exempt under section 3(b) from the registration requirements of the Securities Act of 1933 (the “Securities Act”) (15 U.S.C. 77a *et seq.*).

(1) *Tier 1.* Offerings pursuant to Regulation A in which the sum of all cash and other consideration to be received for the securities being offered (“aggregate offering price”) plus the gross proceeds for all securities sold pursuant to other offering statements within the 12 months before the start of and during the current offering of securities (“aggregate sales”) does not exceed \$20,000,000, including not more than \$6,000,000 offered by all selling securityholders that are affiliates of the issuer (“Tier 1 offerings”).

(2) *Tier 2.* Offerings pursuant to Regulation A in which the sum of the aggregate offering price and aggregate sales does not exceed \$50,000,000, including not more than \$15,000,000 offered by all selling securityholders that are affiliates of the issuer (“Tier 2 offerings”).

(3) *Additional limitation on secondary sales in first year.* The portion of the aggregate offering price attributable to the securities of selling securityholders shall not exceed 30% of the aggregate offering price of a particular offering in:

(i) The issuer’s first offering pursuant to Regulation A; or

(ii) Any subsequent Regulation A offering that is qualified within one year of the qualification date of the issuer’s first offering.

NOTE TO PARAGRAPH (a). Where a mixture of cash and non-cash consideration is to be received, the aggregate offering price must be based on the price at which the securities are offered for cash. Any portion of the aggregate offering price or aggregate sales attributable to cash received in a foreign currency must be translated into United States currency at a currency exchange rate in effect on, or at a reasonable time before, the date of the sale of the securities. If securities are not offered for cash, the aggregate offering price or aggregate sales must 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

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of sales, on the fair value as determined by an accepted standard. Valuations of non-cash consideration must be reasonable at the time made. If convertible securities or warrants are being offered and such securities are convertible, exercisable, or exchangeable within one year of the offering statement's qualification or at the discretion of the issuer, the underlying securities must also be qualified and the aggregate offering price must include the actual or maximum estimated conversion, exercise, or exchange price of such securities.

(b) *Issuer.* The issuer of the securities:

(1) Is an entity organized under the laws of the United States or Canada, or any State, Province, Territory or possession thereof, or the District of Columbia, with its principal place of business in the United States or Canada;

(2) Is not subject to section 13 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a *et seq.*) immediately before the offering;

(3) Is not a development stage company that either has no specific business plan or purpose, or has indicated that its business plan is to merge with or acquire an unidentified company or companies;

(4) Is not an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48));

(5) Is not issuing fractional undivided interests in oil or gas rights, or a similar interest in other mineral rights;

(6) Is not, and has not been, subject to any order of the Commission entered pursuant to Section 12(j) of the Exchange Act (15 U.S.C. 78l(j)) within five years before the filing of the offering statement;

(7) Has filed with the Commission all reports required to be filed, if any, pursuant to Rule 257 (§ 230.257) during the two years before the filing of the offering statement (or for such shorter period that the issuer was required to file such reports); and

(8) Is not disqualified under Rule 262 (§ 230.262).

(c) *Integration with other offerings.* Offers or sales made in reliance on this

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Regulation A will not be integrated with:

(1) Prior offers or sales of securities; or

(2) Subsequent offers or sales of securities that are:

(i) Registered under the Securities Act, except as provided in Rule 255(e) (§ 230.255(e));

(ii) Exempt from registration under Rule 701 (§ 230.701);

(iii) Made pursuant to an employee benefit plan;

(iv) Exempt from registration under Regulation S (§§ 230.901 through 203.905);

(v) Made more than six months after the completion of the Regulation A offering; or

(vi) Exempt from registration under Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)).

NOTE TO PARAGRAPH (c). If these safe harbors do not apply, whether subsequent offers and sales of securities will be integrated with the Regulation A offering will depend on the particular facts and circumstances.

(d) *Offering conditions—(1) Offers.* (i) Except as allowed by Rule 255 (§ 230.255), no offer of securities may be made unless an offering statement has been filed with the Commission.

(ii) After the offering statement has been filed, but before it is qualified:

(A) Oral offers may be made;

(B) Written offers pursuant to Rule 254 (§ 230.254) may be made; and

(C) Solicitations of interest and other communications pursuant to Rule 255 (§ 230.255) may be made.

(iii) Offers may be made after the offering statement has been qualified, but any written offers must be accompanied with or preceded by the most recent offering circular filed with the Commission for such offering.

(2) *Sales.* (i) No sale of securities may be made:

(A) Until the offering statement has been qualified;

(B) By issuers that are not currently required to file reports pursuant to Rule 257(b) (§ 230.257(b)), until a Preliminary Offering Circular is delivered at least 48 hours before the sale to any person that before qualification of the offering statement had indicated an interest in purchasing securities in the offering, including those persons that

responded to an issuer's solicitation of interest materials; and

(C) In a Tier 2 offering of securities that are not listed on a registered national securities exchange upon qualification, unless the purchaser is either an accredited investor (as defined in Rule 501 (§230.501)) or the aggregate purchase price to be paid by the purchaser for the securities (including the actual or maximum estimated conversion, exercise, or exchange price for any underlying securities that have been qualified) is no more than ten percent (10%) of the greater of such purchaser's:

(1) Annual income or net worth if a natural person (with annual income and net worth for such natural person purchasers determined as provided in Rule 501 (§230.501)); or

(2) Revenue or net assets for such purchaser's most recently completed fiscal year end if a non-natural person.

NOTE TO PARAGRAPH (d)(2)(i)(C). When securities underlying warrants or convertible securities are being qualified pursuant to Tier 2 of Regulation A one year or more after the qualification of an offering for which investment limitations previously applied, purchasers of the underlying securities for which investment limitations would apply at that later date may determine compliance with the ten percent (10%) investment limitation using the conversion, exercise, or exchange price to acquire the underlying securities at that later time without aggregating such price with the price of the overlying warrants or convertible securities.

(D) The issuer may rely on a representation of the purchaser when determining compliance with the ten percent (10%) investment limitation in this paragraph (d)(2)(i)(C), provided that the issuer does not know at the time of sale that any such representation is untrue.

(ii) In a transaction that represents a sale by the issuer or an underwriter, or a sale by a dealer within 90 calendar days after qualification of the offering statement, each underwriter or dealer selling in such transaction must deliver to each purchaser from it, not later than two business days following the completion of such sale, a copy of the Final Offering Circular, subject to the following provisions:

(A) If the sale was by the issuer and was not effected by or through an un-

derwriter or dealer, the issuer is responsible for delivering the Final Offering Circular as if the issuer were an underwriter;

(B) For continuous or delayed offerings pursuant to paragraph (d)(3) of this section, the 90 calendar day period for dealers shall commence on the day of the first bona fide offering of securities under such offering statement;

(C) If the security is listed on a registered national securities exchange, no offering circular need be delivered by a dealer more than 25 calendar days after the later of the qualification date of the offering statement or the first date on which the security was bona fide offered to the public;

(D) No offering circular need be delivered by a dealer if the issuer is subject, immediately prior to the time of the filing of the offering statement, to the reporting requirements of Rule 257(b) (§230.257(b)); and

(E) The Final Offering Circular delivery requirements set forth in paragraph (d)(2)(ii) of this section may be satisfied by delivering a notice to the effect that the sale was made pursuant to a qualified offering statement that includes the uniform resource locator ("URL"), which, in the case of an electronic-only offering, must be an active hyperlink, where the Final Offering Circular, or the offering statement of which such Final Offering Circular is part, may be obtained on the Commission's Electronic Data Gathering, Analysis and Retrieval System ("EDGAR") and contact information sufficient to notify a purchaser where a request for a Final Offering Circular can be sent and received in response.

(3) *Continuous or delayed offerings.* (i) Continuous or delayed offerings may be made under this Regulation A, so long as the offering statement pertains only to:

(A) Securities that are to be offered or sold solely by or on behalf of a person or persons other than the issuer, a subsidiary of the issuer, or a person of which the issuer is a subsidiary;

(B) Securities that are to be offered and sold pursuant to a dividend or interest reinvestment plan or an employee benefit plan of the issuer;

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(C) Securities that are to be issued upon the exercise of outstanding options, warrants, or rights;

(D) Securities that are to be issued upon conversion of other outstanding securities;

(E) Securities that are pledged as collateral; or

(F) Securities the offering of which will be commenced within two calendar days after the qualification date, will be made on a continuous basis, may continue for a period in excess of 30 calendar days from the date of initial qualification, and will be offered in an amount that, at the time the offering statement is qualified, is reasonably expected to be offered and sold within two years from the initial qualification date. These securities may be offered and sold only if not more than three years have elapsed since the initial qualification date of the offering statement under which they are being offered and sold; provided, however, that if a new offering statement has been filed pursuant to this paragraph (d)(3)(i)(F), securities covered by the prior offering statement may continue to be offered and sold until the earlier of the qualification date of the new offering statement or 180 calendar days after the third anniversary of the initial qualification date of the prior offering statement. Before the end of such three-year period, an issuer may file a new offering statement covering the securities. The new offering statement must include all the information that would be required at that time in an offering statement relating to all offerings that it covers. Before the qualification date of the new offering statement, the issuer may include as part of such new offering statement any unsold securities covered by the earlier offering statement by identifying on the cover page of the new offering circular, or the latest amendment, the amount of such unsold securities being included. The offering of securities on the earlier offering statement will be deemed terminated as of the date of qualification of the new offering statement. Securities may be sold pursuant to this paragraph (d)(3)(i)(F) only if the issuer is current in its annual and semiannual filings

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pursuant to Rule 257(b) (§ 230.257(b)), at the time of such sale.

(ii) At the market offerings, by or on behalf of the issuer or otherwise, are not permitted under this Regulation A. As used in this paragraph (d)(3)(ii), the term *at the market offering* means an offering of equity securities into an existing trading market for outstanding shares of the same class at other than a fixed price.

(e) *Confidential treatment.* A request for confidential treatment may be made under Rule 406 (§ 230.406) for information required to be filed, and Rule 83 (§ 200.83) for information not required to be filed.

(f) *Electronic filing.* Documents filed or otherwise provided to the Commission pursuant to this Regulation A must be submitted in electronic format by means of EDGAR in accordance with the EDGAR rules set forth in Regulation S-T (17 CFR part 232).

[80 FR 21895, Apr. 20, 2015]

§ 230.252 Offering statement.

(a) *Documents to be included.* The offering statement consists of the contents required by Form 1-A (§ 239.90 of this chapter) and any other material information necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

(b) *Paper, printing, language and pagination.* Except as otherwise specified in this rule, the requirements for offering statements are the same as those specified in Rule 403 (§ 230.403) for registration statements under the Act. No fee is payable to the Commission upon either the submission or filing of an offering statement on Form 1-A, or any amendment to an offering statement.

(c) *Signatures.* The issuer, its principal executive officer, principal financial officer, principal accounting officer, and a majority of the members of its board of directors or other governing body, must sign the offering statement in the manner prescribed by Form 1-A. If a signature is by a person on behalf of any other person, evidence of authority to sign must be filed, except where an executive officer signs for the issuer.

(d) *Non-public submission.* An issuer whose securities have not been previously sold pursuant to a qualified offering statement under this Regulation A or an effective registration statement under the Securities Act may submit a draft offering statement to the Commission for non-public review by the staff of the Commission before public filing, provided that the offering statement shall not be qualified less than 21 calendar days after the public filing with the Commission of:

- (1) The initial non-public submission;
- (2) All non-public amendments; and
- (3) All non-public correspondence submitted by or on behalf of the issuer to the Commission staff regarding such submissions (subject to any separately approved confidential treatment request under Rule 251(e) (§230.251(e)).

(e) *Qualification.* An offering statement and any amendment thereto can be qualified only at such date and time as the Commission may determine.

(f) *Amendments.* (1)(i) Amendments to an offering statement must be signed and filed with the Commission in the same manner as the initial filing. Amendments to an offering statement must be filed under cover of Form 1-A and must be numbered consecutively in the order in which filed.

(ii) Every amendment that includes amended audited financial statements must include the consent of the certifying accountant to the use of such accountant's certification in connection with the amended financial statements in the offering statement or offering circular and to being named as having audited such financial statements.

(iii) Amendments solely relating to Part III of Form 1-A must comply with the requirements of paragraph (f)(1)(i) of this section, except that such amendments may be limited to Part I of Form 1-A, an explanatory note, and all of the information required by Part III of Form 1-A.

(2) Post-qualification amendments must be filed in the following circumstances for ongoing offerings:

(i) At least every 12 months after the qualification date to include the financial statements that would be required by Form 1-A as of such date; or

(ii) To reflect any facts or events arising after the qualification date of

the offering statement (or the most recent post-qualification amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the offering statement.

[80 FR 21895, Apr. 20, 2015]

§ 230.253 Offering circular.

(a) *Contents.* An offering circular must include the information required by Form 1-A for offering circulars.

(b) *Information that may be omitted.* Notwithstanding paragraph (a) of this section, a qualified offering circular may omit information with respect to the public offering price, underwriting syndicate (including any material relationships between the issuer or selling securityholders and the unnamed underwriters, brokers or dealers), underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices and other items dependent upon the offering price, delivery dates, and terms of the securities dependent upon the offering date; provided, that the following conditions are met:

(1) The securities to be qualified are offered for cash.

(2) The outside front cover page of the offering circular includes a bona fide estimate of the range of the maximum offering price and the maximum number of shares or other units of securities to be offered or a bona fide estimate of the principal amount of debt securities offered, subject to the following conditions:

(i) The range must not exceed \$2 for offerings where the upper end of the range is \$10 or less or 20% if the upper end of the price range is over \$10; and

(ii) The upper end of the range must be used in determining the aggregate offering price under Rule 251(a) (§230.251(a)).

(3) The offering statement does not relate to securities to be offered by competitive bidding.

(4) The volume of securities (the number of equity securities or aggregate principal amount of debt securities) to be offered may not be omitted in reliance on this paragraph (b).

NOTE TO PARAGRAPH (b). A decrease in the volume of securities offered or a change in

the bona fide estimate of the offering price range from that indicated in the offering circular filed as part of a qualified offering statement may be disclosed in the offering circular filed with the Commission pursuant to Rule 253(g) (§230.253(g)), so long as the decrease in the volume of securities offered or change in the price range would not materially change the disclosure contained in the offering statement at qualification. Notwithstanding the foregoing, any decrease in the volume of securities offered and any deviation from the low or high end of the price range may be reflected in the offering circular supplement filed with the Commission pursuant to Rule 253(g)(1) or (3) (§230.253(g)(1) or (3)) if, in the aggregate, the decrease in volume and/or change in price represent no more than a 20% change from the maximum aggregate offering price calculable using the information in the qualified offering statement. In no circumstances may this paragraph be used to offer securities where the maximum aggregate offering price would result in the offering exceeding the limit set forth in Rule 251(a) (§230.251(a)) or if the change would result in a Tier 1 offering becoming a Tier 2 offering. An offering circular supplement may not be used to increase the volume of securities being offered. Additional securities may only be offered pursuant to a new offering statement or post-qualification amendment qualified by the Commission.

(c) *Filing of omitted information.* The information omitted from the offering circular in reliance upon paragraph (b) of this section must be contained in an offering circular filed with the Commission pursuant to paragraph (g) of this section; except that if such offering circular is not so filed by the later of 15 business days after the qualification date of the offering statement or 15 business days after the qualification of a post-qualification amendment thereto that contains an offering circular, the information omitted in reliance upon paragraph (b) of this section must be contained in a qualified post-qualification amendment to the offering statement.

(d) *Presentation of information.* (1) Information in the offering circular must be presented in a clear, concise and understandable manner and in a type size that is easily readable. Repetition of information should be avoided; cross-referencing of information within the document is permitted.

(2) Where an offering circular is distributed through an electronic medium, issuers may satisfy legibility re-

quirements applicable to printed documents by presenting all required information in a format readily communicated to investors.

(e) *Date.* An offering circular must be dated approximately as of the date it was filed with the Commission.

(f) *Cover page legend.* The cover page of every offering circular must display the following statement highlighted by prominent type or in another manner:

The United States Securities and Exchange Commission does not pass upon the merits of or give its approval to any securities offered or the terms of the offering, nor does it pass upon the accuracy or completeness of any offering circular or other solicitation materials. These securities are offered pursuant to an exemption from registration with the Commission; however, the Commission has not made an independent determination that the securities offered are exempt from registration.

(g) *Offering circular supplements.* (1) An offering circular that discloses information previously omitted from the offering circular in reliance upon Rule 253(b) (§230.253(b)) must be filed with the Commission no later than two business days following the earlier of the date of determination of the offering price or the date such offering circular is first used after qualification in connection with a public offering or sale.

(2) An offering circular that reflects information other than that covered in paragraph (g)(1) of this section that constitutes a substantive change from or addition to the information set forth in the last offering circular filed with the Commission must be filed with the Commission no later than five business days after the date it is first used after qualification in connection with a public offering or sale. If an offering circular filed pursuant to this paragraph (g)(2) consists of an offering circular supplement attached to an offering circular that previously had been filed or was not required to be filed pursuant to paragraph (g) of this section because it did not contain substantive changes from an offering circular that previously was filed, only the offering circular supplement need be filed under paragraph (g) of this section, provided

that the cover page of the offering circular supplement identifies the date(s) of the related offering circular and any offering circular supplements thereto that together constitute the offering circular with respect to the securities currently being offered or sold.

(3) An offering circular that discloses information, facts or events covered in both paragraphs (g)(1) and (2) of this section must be filed with the Commission no later than two business days following the earlier of the date of the determination of the offering price or the date it is first used after qualification in connection with a public offering or sale.

(4) An offering circular required to be filed pursuant to paragraph (g) of this section that is not filed within the time frames specified in paragraphs (g)(1) through (3) of this section, as applicable, must be filed pursuant to this paragraph (g)(4) as soon as practicable after the discovery of such failure to file.

(5) Each offering circular filed under this section must contain in the upper right corner of the cover page the paragraphs of paragraphs (g)(1) through (4) of this section under which the filing is made, and the file number of the offering statement to which the offering circular relates.

[80 FR 21895, Apr. 20, 2015]

§ 230.254 Preliminary offering circular.

After the filing of an offering statement, but before its qualification, written offers of securities may be made if they meet the following requirements:

(a) *Outside front cover page.* The outside front cover page of the material bears the caption *Preliminary Offering Circular*, the date of issuance, and the following legend, which must be highlighted by prominent type or in another manner:

An offering statement pursuant to Regulation A relating to these securities has been filed with the Securities and Exchange Commission. Information contained in this Preliminary Offering Circular is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted before the offering statement filed with the Commission is qualified. This Preliminary Offering Circular

shall not constitute an offer to sell or the solicitation of an offer to buy nor may there be any sales of these securities in any state in which such offer, solicitation or sale would be unlawful before registration or qualification under the laws of any such state. We may elect to satisfy our obligation to deliver a Final Offering Circular by sending you a notice within two business days after the completion of our sale to you that contains the URL where the Final Offering Circular or the offering statement in which such Final Offering Circular was filed may be obtained.

(b) *Other contents.* The Preliminary Offering Circular contains substantially the information required to be in an offering circular by Form 1-A (§239.90 of this chapter), except that certain information may be omitted under Rule 253(b) (§230.253(b)) subject to the conditions set forth in such rule.

(c) *Filing.* The Preliminary Offering Circular is filed as a part of the offering statement.

[80 FR 21895, Apr. 20, 2015]

§ 230.255 Solicitations of interest and other communications.

(a) *Solicitation of interest.* At any time before the qualification of an offering statement, including before the non-public submission or public filing of such offering statement, an issuer or any person authorized to act on behalf of an issuer may communicate orally or in writing to determine whether there is any interest in a contemplated securities offering. Such communications are deemed to be an offer of a security for sale for purposes of the anti-fraud provisions of the federal securities laws. No solicitation or acceptance of money or other consideration, nor of any commitment, binding or otherwise, from any person is permitted until qualification of the offering statement.

(b) *Conditions.* The communications must:

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

(2) State that no offer to buy the securities can be accepted and no part of the purchase price can be received

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until the offering statement is qualified, and any such offer may be withdrawn or revoked, without obligation or commitment of any kind, at any time before notice of its acceptance given after the qualification date;

(3) State that a person's indication of interest involves no obligation or commitment of any kind; and

(4) After the public filing of the offering statement:

(i) State from whom a copy of the most recent version of the Preliminary Offering Circular may be obtained, including a phone number and address of such person;

(ii) Provide the URL where such Preliminary Offering Circular, or the offering statement in which such Preliminary Offering Circular was filed, may be obtained; or

(iii) Include a complete copy of the Preliminary Offering Circular.

(c) *Indications of interest.* Any written communication under this rule may include a means by which a person may indicate to the issuer that such person is interested in a potential offering. This issuer may require the name, address, telephone number, and/or email address in any response form included pursuant to this paragraph (c).

(d) *Revised solicitations of interest.* If solicitation of interest materials are used after the public filing of the offering statement and such solicitation of interest materials contain information that is inaccurate or inadequate in any material respect, revised solicitation of interest materials must be redistributed in a substantially similar manner as such materials were originally distributed. Notwithstanding the foregoing in this paragraph (d), if the only information that is inaccurate or inadequate is contained in a Preliminary Offering Circular provided with the solicitation of interest materials pursuant to paragraphs (b)(4)(i) or (ii) of this section, no such redistribution is required in the following circumstances:

(1) in the case of paragraph (b)(4)(i) of this section, the revised Preliminary Offering Circular will be provided to any persons making new inquiries and will be recirculated to any persons making any previous inquiries; or

(2) in the case of paragraph (b)(4)(ii) of this section, the URL continues to

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link directly to the most recent Preliminary Offering Circular or to the offering statement in which such revised Preliminary Offering Circular was filed.

(e) *Abandoned offerings.* Where an issuer decides to register an offering under the Securities Act after soliciting interest in a contemplated, but subsequently abandoned, Regulation A offering, the abandoned Regulation A offering would not be subject to integration with the registered offering if the issuer engaged in solicitations of interest pursuant to this rule only to qualified institutional buyers and institutional accredited investors permitted by Section 5(d) of the Securities Act. If the issuer engaged in solicitations of interest to persons other than qualified institutional buyers and institutional accredited investors, an abandoned Regulation A offering would not be subject to integration if the issuer (and any underwriter, broker, dealer, or agent used by the issuer in connection with the proposed offering) waits at least 30 calendar days between the last such solicitation of interest in the Regulation A offering and the filing of the registration statement with the Commission.

[80 FR 21895, Apr. 20, 2015]

§ 230.256 Definition of “qualified purchaser”.

For purposes of Section 18(b)(3) of the Securities Act [15 U.S.C. 77r(b)(3)], a “qualified purchaser” means any person to whom securities are offered or sold pursuant to a Tier 2 offering of this Regulation A.

[80 FR 21895, Apr. 20, 2015]

§ 230.257 Periodic and current reporting; exit report.

(a) *Tier 1: Exit report.* Each issuer that has filed an offering statement for a Tier 1 offering that has been qualified pursuant to this Regulation A must file an exit report on Form 1–Z (§239.94 of this chapter) not later than 30 calendar days after the termination or completion of the offering.

(b) *Tier 2: Periodic and current reporting.* Each issuer that has filed an offering statement for a Tier 2 offering that has been qualified pursuant to this

Regulation A must file with the Commission the following periodic and current reports:

(1) *Annual reports.* An annual report on Form 1-K (§239.91 of this chapter) for the fiscal year in which the offering statement became qualified and for any fiscal year thereafter, unless the issuer's obligation to file such annual report is suspended under paragraph (d) of this section. Annual reports must be filed within the period specified in Form 1-K.

(2) *Special financial report.* (i) A special financial report on Form 1-K or Form 1-SA if the offering statement did not contain the following:

(A) Audited financial statements for the issuer's most recent fiscal year (or for the life of the issuer if less than a full fiscal year) preceding the fiscal year in which the issuer's offering statement became qualified; or

(B) unaudited financial statements covering the first six months of the issuer's current fiscal year if the offering statement was qualified during the last six months of that fiscal year.

(ii) The special financial report described in paragraph (b)(2)(i)(A) of this section must be filed under cover of Form 1-K within 120 calendar days after the qualification date of the offering statement and must include audited financial statements for such fiscal year or other period specified in that paragraph, as the case may be. The special financial report described in paragraph (b)(2)(i)(B) of this section must be filed under cover of Form 1-SA within 90 calendar days after the qualification date of the offering statement and must include the semiannual financial statements for the first six months of the issuer's fiscal year, which may be unaudited.

(iii) A special financial report must be signed in accordance with the requirements of the form on which it is filed.

(3) *Semiannual report.* A semiannual report on Form 1-SA (§239.92 of this chapter) within the period specified in Form 1-SA. Semiannual reports must cover the first six months of each fiscal year of the issuer, commencing with the first six months of the fiscal year immediately following the most recent fiscal year for which full financial

statements were included in the offering statement, or, if the offering statement included financial statements for the first six months of the fiscal year following the most recent full fiscal year, for the first six months of the following fiscal year.

(4) *Current reports.* Current reports on Form 1-U (§239.93 of this chapter) with respect to the matters and within the period specified in that form, unless substantially the same information has been previously reported to the Commission by the issuer under cover of Form 1-K or Form 1-SA.

(5) *Reporting by successor issuers.* Where in connection with a succession by merger, consolidation, exchange of securities, acquisition of assets or otherwise, securities of any issuer that is not required to file reports pursuant to paragraph (b) of this section are issued to the holders of any class of securities of another issuer that is required to file such reports, the duty to file reports pursuant to paragraph (b) of this section shall be deemed to have been assumed by the issuer of the class of securities so issued. The successor issuer must, after the consummation of the succession, file reports in accordance with paragraph (b) of this section, unless that issuer is exempt from filing such reports or the duty to file such reports is terminated or suspended under paragraph (d) of this section.

(c) *Amendments.* All amendments to the reports described in paragraphs (a) and (b) of this section must be filed under cover of the form amended, marked with the letter *A* to designate the document as an amendment, e.g., "1-K/A," and in compliance with pertinent requirements applicable to such reports. Amendments filed pursuant to this paragraph (c) must set forth the complete text of each item as amended, but need not include any items that were not amended. Amendments must be numbered sequentially and be filed separately for each report amended. Amendments must be signed on behalf of the issuer by a duly authorized representative of the issuer. An amendment to any report required to include certifications as specified in the applicable form must include new certifications by the appropriate persons.

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(d) Suspension of duty to file reports.

(1) The duty to file reports under this rule shall be automatically suspended if and so long as the issuer is subject to the duty to file reports required by section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 15 U.S.C. 78o).

(2) The duty to file reports under paragraph (b) of this section with respect to a class of securities held of record (as defined in Rule 12g5-1 (§240.12g5-1 of this chapter)) by less than 300 persons, or less than 1,200 persons for a bank (as defined in Section 3(a)(6) of the Exchange Act (15 U.S.C. 78c(a)(6)), or a bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841)), shall be suspended for such class of securities immediately upon filing with the Commission an exit report on Form 1-Z (§239.94 of this chapter) if the issuer of such class has filed all reports due pursuant to this rule before the date of such Form 1-Z filing for the shorter of:

(i) The period since the issuer became subject to such reporting obligation; or

(ii) Its most recent three fiscal years and the portion of the current year preceding the date of filing Form 1-Z.

(3) For the purposes of paragraph (d)(2) of this section, the term *class* shall be construed to include all securities of an issuer that are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. If the Form 1-Z is subsequently withdrawn or if it is denied because the issuer was ineligible to use the form, the issuer must, within 60 calendar days, file with the Commission all reports which would have been required if such exit report had not been filed. If the suspension resulted from the issuer's merger into, or consolidation with, another issuer or issuers, the notice must be filed by the successor issuer.

(4) The ability to suspend reporting, as described in paragraph (d)(2) of this section, is not available for any class of securities if:

(i) During that fiscal year a Tier 2 offering statement was qualified;

(ii) The issuer has not filed an annual report under this rule or the Exchange Act for the fiscal year in which a Tier 2 offering statement was qualified; or

(iii) Offers or sales of securities of that class are being made pursuant to a Tier 2 Regulation A offering.

(e) Termination of duty to file reports. If the duty to file reports is suspended pursuant to paragraph (d)(1) of this section and such suspension ends because the issuer terminates or suspends its duty to file reports under the Exchange Act, the issuer's obligation to file reports under paragraph (b) of this section shall:

(1) Automatically terminate if the issuer is eligible to suspend its duty to file reports under paragraphs (d)(2) and (3) of this section; or

(2) Recommence with the report covering the most recent financial period after that included in any effective registration statement or filed Exchange Act report.

[80 FR 21895, Apr. 20, 2015, as amended at 82 FR 45725, Oct. 2, 2017]

§ 230.258 Suspension of the exemption.

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

(1) No exemption is available or any of the terms, conditions or requirements of Regulation A have not been complied with;

(2) The offering statement, any sales or solicitation of interest material, or any report filed pursuant to Rule 257 (§230.257) contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading;

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

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

(5) Any person specified in Rule 262(a) (§230.262(a)) has been indicted for any crime or offense of the character specified in Rule 262(a)(1) (§230.262(a)(1)), or any proceeding has been initiated for the purpose of enjoining any such person from engaging in or continuing any conduct or practice of the character specified in Rule 262(a)(2)

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(§ 230.262(a)(2)), or any proceeding has been initiated for the purposes of Rule 262(a)(3)–(8) (§ 230.262(a)(3) through (8)); or

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

(b) *Notice and hearing.* Upon the entry of an order under paragraph (a) of this section, the Commission will promptly give notice to the issuer, any underwriter, and any selling securityholder:

(1) That such order has been entered, together with a brief statement of the reasons for the entry of the order; and

(2) That the Commission, upon receipt of a written request within 30 calendar days after the entry of the order, will, within 20 calendar days after receiving the request, order a hearing at a place to be designated by the Commission.

(c) *Suspension order.* If no hearing is requested and none is ordered by the Commission, an order entered under paragraph (a) of this section shall become permanent on the 30th calendar day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission. Where a hearing is requested or is ordered by the Commission, the Commission will, after notice of and opportunity for such hearing, either vacate the order or enter an order permanently suspending the exemption.

(d) *Permanent suspension.* The Commission may, at any time after notice of and opportunity for hearing, enter an order permanently suspending the exemption for any reason upon which it could have entered a temporary suspension order under paragraph (a) of this section. Any such order shall remain in effect until vacated by the Commission.

(e) *Notice procedures.* All notices required by this rule must be given by personal service, registered or certified mail to the addresses given by the issuer, any underwriter and any selling securityholder in the offering statement.

[80 FR 21895, Apr. 20, 2015]

§ 230.259 Withdrawal or abandonment of offering statements.

(a) *Withdrawal.* If none of the securities that are the subject of an offering statement has been sold and such offering statement is not the subject of a proceeding under Rule 258 (§ 230.258), the offering statement may be withdrawn with the Commission's consent. The application for withdrawal must state the reason the offering statement is to be withdrawn and must be signed by an authorized representative of the issuer. Any withdrawn document will remain in the Commission's files, as well as the related request for withdrawal.

(b) *Abandonment.* When an offering statement has been on file with the Commission for nine months without amendment and has not become qualified, the Commission may, in its discretion, declare the offering statement abandoned. If the offering statement has been amended, the nine-month period shall be computed from the date of the latest amendment.

[80 FR 21895, Apr. 20, 2015]

§ 230.260 Insignificant deviations from a term, condition or requirement of Regulation A.

(a) *Failure to comply.* A failure to comply with a term, condition or requirement of Regulation A will not result in the loss of the exemption from the requirements of section 5 of the Securities Act for any offer or sale to a particular individual or entity, if the person relying on the exemption establishes that:

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

(2) The failure to comply was insignificant with respect to the offering as a whole, provided that any failure to comply with Rule 251(a), (b), and (d)(1) and (3) (§ 230.251(a), (b), and (d)(1) and (3)) shall be deemed to be significant to the offering as a whole; and

(3) A good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of Regulation A.

(b) *Action by Commission.* A transaction made in reliance upon Regulation A must comply with all applicable

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terms, conditions and requirements of the regulation. Where an exemption is established only through reliance upon paragraph (a) of this section, the failure to comply shall nonetheless be actionable by the Commission under section 20 of the Securities Act.

(c) *Suspension.* This provision provides no relief or protection from a proceeding under Rule 258 (§ 230.258).

[80 FR 21895, Apr. 20, 2015]

§ 230.261 Definitions.

As used in this Regulation A, all terms have the same meanings as in Rule 405 (§ 230.405), except that all references to *registrant* in those definitions shall refer to the issuer of the securities to be offered and sold under Regulation A. In addition, these terms have the following meanings:

(a) *Affiliated issuer.* An affiliate (as defined in Rule 501 (§ 230.501)) of the issuer that is issuing securities in the same offering.

(b) *Business day.* Any day except Saturdays, Sundays or United States federal holidays.

(c) *Eligible securities.* Equity securities, debt securities, and securities convertible or exchangeable to equity interests, including any guarantees of such securities, but not including asset-backed securities as such term is defined in Item 1101(c) of Regulation AB.

(d) *Final order.* A written directive or declaratory statement issued by a federal or state agency described in Rule 262(a)(3) (§ 230.262(a)(3)) 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.

(e) *Final offering circular.* The more recent of: the current offering circular contained in a qualified offering statement; and any offering circular filed pursuant to Rule 253(g) (§ 230.253(g)). If, however, the issuer is relying on Rule 253(b) (§ 230.253(b)), the Final Offering Circular is the most recent of the offering circular filed pursuant to Rule 253(g)(1) or (3) (§ 230.253(g)(1) or (3)) and any subsequent offering circular filed pursuant to Rule 253(g) (§ 230.253(g)).

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(f) *Offering statement.* An offering statement prepared pursuant to Regulation A.

(g) *Preliminary offering circular.* The offering circular described in Rule 254 (§ 230.254).

[80 FR 21895, Apr. 20, 2015]

§ 230.262 Disqualification provisions.

(a) *Disqualification events.* No exemption under this Regulation A shall be available for a sale of securities if the issuer; any predecessor of the issuer; any affiliated issuer; any director, executive officer, other officer participating in the offering, general partner or managing member of the issuer; any beneficial owner of 20% or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power; any promoter connected with the issuer in any capacity at the time of filing, any offer after qualification, or such sale; any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with such sale of securities; any general partner or managing member of any such solicitor; or any director, executive officer or other officer participating in the offering of any such solicitor or general partner or managing member of such solicitor:

(1) Has been convicted, within ten years before the filing of the offering statement (or five years, in the case of issuers, their predecessors and affiliated issuers), of any felony or misdemeanor:

(i) In connection with the purchase or sale of any security;

(ii) Involving the making of any false filing with the Commission; or

(iii) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities;

(2) Is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years before the filing of the offering statement, that, at the time of such filing, restrains or enjoins such person from engaging or continuing to engage in any conduct or practice:

(i) In connection with the purchase or sale of any security;

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(ii) Involving the making of any false filing with the Commission; or

(iii) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities;

(3) Is subject to a final order (as defined in Rule 261 (§230.261)) of a state securities commission (or an agency or officer of a state performing like functions); a state authority that supervises or examines banks, savings associations, or credit unions; a state insurance commission (or an agency or officer of a state performing like functions); an appropriate federal banking agency; the U.S. Commodity Futures Trading Commission; or the National Credit Union Administration that:

(i) At the time of the filing of the offering statement, bars the person from:

(A) Association with an entity regulated by such commission, authority, agency, or officer;

(B) Engaging in the business of securities, insurance or banking; or

(C) Engaging in savings association or credit union activities; or

(ii) Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct entered within ten years before such filing of the offering statement;

(4) Is subject to an order of the Commission entered pursuant to section 15(b) or 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b) or 78o-4(c)) or section 203(e) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(e) or (f)) that, at the time of the filing of the offering statement:

(i) Suspends or revokes such person's registration as a broker, dealer, municipal securities dealer or investment adviser;

(ii) Places limitations on the activities, functions or operations of such person; or

(iii) Bars such person from being associated with any entity or from participating in the offering of any penny stock;

(5) Is subject to any order of the Commission entered within five years before the filing of the offering statement that, at the time of such filing, orders the person to cease and desist

from committing or causing a violation or future violation of:

(i) Any scienter-based anti-fraud provision of the federal securities laws, including without limitation section 17(a)(1) of the Securities Act of 1933 (15 U.S.C. 77q(a)(1)), section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) and 17 CFR 240.10b-5, section 15(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)(1)) and section 206(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-6(1)), or any other rule or regulation thereunder; or

(ii) Section 5 of the Securities Act of 1933 (15 U.S.C. 77e).

(6) Is suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade;

(7) Has filed (as a registrant or issuer), or was or was named as an underwriter in, any registration statement or offering statement filed with the Commission that, within five years before the filing of the offering statement, was the subject of a refusal order, stop order, or order suspending the Regulation A exemption, or is, at the time of such filing, the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued; or

(8) Is subject to a United States Postal Service false representation order entered within five years before the filing of the offering statement, or is, at the time of such filing, subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations.

(b) *Transition, waivers, reasonable care exception.* Paragraph (a) of this section shall not apply:

(1) With respect to any order under § 230.262(a)(3) or (5) that occurred or was issued before June 19, 2015;

(2) Upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission

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determines that it is not necessary under the circumstances that an exemption be denied;

(3) If, before the filing of the offering statement, the court or regulatory authority that entered the relevant order, judgment or decree advises in writing (whether contained in the relevant judgment, order or decree or separately to the Commission or its staff) that disqualification under paragraph (a) of this section should not arise as a consequence of such order, judgment or decree; or

(4) If the issuer establishes that it did not know and, in the exercise of reasonable care, could not have known that a disqualification existed under paragraph (a) of this section.

NOTE TO PARAGRAPH (b)(4). An issuer will not be able to establish that it has exercised reasonable care unless it has made, in light of the circumstances, factual inquiry into whether any disqualifications exist. The nature and scope of the factual inquiry will vary based on the facts and circumstances concerning, among other things, the issuer and the other offering participants.

(c) *Affiliated issuers.* For purposes of paragraph (a) of this section, events relating to any affiliated issuer that occurred before the affiliation arose will be not considered disqualifying if the affiliated entity is not:

(1) In control of the issuer; or

(2) Under common control with the issuer by a third party that was in control of the affiliated entity at the time of such events.

(d) *Disclosure of prior “bad actor” events.* The issuer must include in the offering circular a description of any matters that would have triggered disqualification under paragraphs (a)(3) and (5) of this section but occurred before June 19, 2015. The failure to provide such information shall not prevent an issuer from relying on Regulation A if the issuer establishes that it did not know and, in the exercise of reasonable care, could not have known of the existence of the undisclosed matter or matters.

[80 FR 21895, Apr. 20, 2015]

§ 230.263 Consent to service of process.

(a) If the issuer is not organized under the laws of any of the states or territories of the United States of

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America, it shall furnish to the Commission a written irrevocable consent and power of attorney on Form F-X (§239.42 of this chapter) at the time of filing the offering statement required by Rule 252 (§230.252).

(b) Any change to the name or address of the agent for service of the issuer shall be communicated promptly to the Commission through amendment of the requisite form and referencing the file number of the relevant offering statement.

[80 FR 21895, Apr. 20, 2015]

§§ 230.300–230.346 [Reserved]

ATTENTION ELECTRONIC FILERS

THIS REGULATION SHOULD BE READ IN CONJUNCTION WITH REGULATION S-T (PART 232 OF THIS CHAPTER), WHICH GOVERNS THE PREPARATION AND SUBMISSION OF DOCUMENTS IN ELECTRONIC FORMAT. MANY PROVISIONS RELATING TO THE PREPARATION AND SUBMISSION OF DOCUMENTS IN PAPER FORMAT CONTAINED IN THIS REGULATION ARE SUPERSEDED BY THE PROVISIONS OF REGULATION S-T FOR DOCUMENTS REQUIRED TO BE FILED IN ELECTRONIC FORMAT.

REGULATION C—REGISTRATION

AUTHORITY: Sections 230.400 to 230.499 issued under secs. 6, 8, 10, 19, 48 Stat. 78 79, 81, and 85, as amended (15 U.S.C. 77f, 77h, 77j, 77s) Sec. 230.457 also issued under secs. 6 and 7, 15 U.S.C. 77f and 77g.

NOTE: In §§230.400 to 230.499, the numbers to the right of the decimal point correspond with the respective rule number in Regulation C, under the Securities Act of 1933.

§ 230.400 Application of §§ 230.400 to 230.494, inclusive.

Sections 230.400 to 230.494 shall govern every registration of securities under the Act, except that any provision in a form, or an item of Regulation S-K (17 CFR 229.001 *et seq.*) referred to in such form, covering the same subject matter as any such rule shall be controlling unless otherwise specifically provided in §§230.400 to 230.494.

[47 FR 11434, Mar. 16, 1982, as amended at 76 FR 71876, Nov. 21, 2011]