

§ 230.504

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by the issuer under § 230.502(b)(2) to any purchaser that is not an accredited investor.

(d) Amendments to notices filed under paragraph (a) of this section need only report the issuer's name and the information required by Part C and any material change in the facts from those set forth in Parts A and B.

(e) A notice on Form D shall be considered filed with the Commission under paragraph (a) of this section.

(1) As of the date on which it is received at the Commission's principal office in Washington, DC; or

(2) As of the date on which the notice is mailed by means of United States registered or certified mail to the Commission's principal office in Washington, DC, if the notice is delivered to such office after the date on which it is required to be filed.

[51 FR 36386, Oct. 10, 1986, as amended at 54 FR 11373, Mar. 20, 1989]

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

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

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

(2) An investment company; or

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

(b) *Conditions to be met—(1) General conditions.* To qualify for exemption under this § 230.504, offers and sales must satisfy the terms and conditions of §§ 230.501 and 230.502 (a), (c) and (d), except that the provisions of § 230.502 (c) and (d) will not apply to offers and sales of securities under this § 230.504 that are made:

(i) Exclusively in one or more states that provide for the registration of the securities, and require the public filing and delivery to investors of a substantive disclosure document before

sale, and are made in accordance with those state provisions;

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

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

(2) The aggregate offering price for an offering of securities under this § 230.504, as defined in § 230.501(c), shall not exceed \$1,000,000, less the aggregate offering price for all securities sold within the twelve months before the start of and during the offering of securities under this § 230.504, in reliance on any exemption under section 3(b), or in violation of section 5(a) of the Securities Act.

NOTE 1: The calculation of the aggregate offering price is illustrated as follows:

If an issuer sold \$900,000 on June 1, 1987 under this § 230.504 and an additional \$4,100,000 on December 1, 1987 under § 230.505, the issuer could not sell any of its securities under this § 230.504 until December 1, 1988. Until then the issuer must count the December 1, 1987 sale towards the \$1,000,000 limit within the preceding twelve months.

NOTE 2: If a transaction under § 230.504 fails to meet the limitation on the aggregate offering price, it does not affect the availability of this § 230.504 for the other transactions considered in applying such limitation. For example, if an issuer sold \$1,000,000 worth of its securities on January 1, 1988 under this § 230.504 and an additional \$500,000 worth on July 1, 1988, this § 230.504 would not be available for the later sale, but would still be applicable to the January 1, 1988 sale.

[57 FR 36473, Aug. 13, 1992, as amended at 61 FR 30402, June 14, 1996; 64 FR 11094, Mar. 8, 1999]

§ 230.505 Exemption for limited offers and sales of securities not exceeding \$5,000,000.

(a) *Exemption.* Offers and sales of securities that satisfy the conditions in paragraph (b) of this section by an issuer that is not an investment company shall be exempt from the provisions of section 5 of the Act under section 3(b) of the Act.

(b) *Conditions to be met—(1) General conditions.* To qualify for exemption under this section, offers and sales must satisfy the terms and conditions of §§ 230.501 and 230.502.

(2) *Specific conditions—(i) Limitation on aggregate offering price.* The aggregate offering price for an offering of securities under this § 230.505, as defined in § 203.501(c), shall not exceed \$5,000,000, less the aggregate offering price for all securities sold within the twelve months before the start of and during the offering of securities under this section in reliance on any exemption under section 3(b) of the Act or in violation of section 5(a) of the Act.

NOTE: The calculation of the aggregate offering price is illustrated as follows:

Example 1: If an issuer sold \$2,000,000 of its securities on June 1, 1982 under this § 230.505 and an additional \$1,000,000 on September 1, 1982, the issuer would be permitted to sell only \$2,000,000 more under this § 230.505 until June 1, 1983. Until that date the issuer must count both prior sales towards the \$5,000,000 limit. However, if the issuer made its third sale on June 1, 1983, the issuer could then sell \$4,000,000 of its securities because the June 1, 1982 sale would not be within the preceding twelve months.

Example 2: If an issuer sold \$500,000 of its securities on June 1, 1982 under § 230.504 and an additional \$4,500,000 on December 1, 1982 under this section, then the issuer could not sell any of its securities under this section until June 1, 1983. At that time it could sell an additional \$500,000 of its securities.

(ii) *Limitation on number of purchasers.* There are no more than or the issuer reasonably believes that there are no more than 35 purchasers of securities from the issuer in any offering under this section.

(iii) *Disqualifications.* No exemption under this section shall be available for the securities of any issuer described in § 230.262 of Regulation A, except that for purposes of this section only:

(A) The term “filing of the offering statement required by § 230.252” as used in § 230.262(a), (b) and (c) shall mean the first sale of securities under this section;

(B) The term “underwriter” as used in § 230.262 (b) and (c) shall mean a person that has been or will be paid directly or indirectly remuneration for solicitation of purchasers in connection with sales of securities under this section; and

(C) Paragraph (b)(2)(iii) of this section shall not apply to any issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied. Any such determination shall be without prejudice to any other action by the Commission in any other proceeding or matter with respect to the issuer or any other person.

[47 FR 11262, Mar. 16, 1982, as amended at 54 FR 11373, Mar. 20, 1989; 57 FR 36473, Aug. 13, 1992]

§ 230.506 Exemption for limited offers and sales without regard to dollar amount of offering.

(a) *Exemption.* Offers and sales of securities by an issuer that satisfy the conditions in paragraph (b) of this section shall be deemed to be transactions not involving any public offering within the meaning of section 4(2) of the Act.

(b) *Conditions to be met—(1) General conditions.* To qualify for an exemption under this section, offers and sales must satisfy all the terms and conditions of §§ 230.501 and 230.502.

(2) *Specific Conditions—(i) Limitation on number of purchasers.* There are no more than or the issuer reasonably believes that there are no more than 35 purchasers of securities from the issuer in any offering under this section.

NOTE: See § 230.501(e) for the calculation of the number of purchasers and § 230.502(a) for what may or may not constitute an offering under this section.

(ii) *Nature of purchasers.* Each purchaser who is not an accredited investor either alone or with his purchaser representative(s) has such knowledge