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REGULATION A

CONDITIONAL SMALL ISSUES EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

REGULATION A

REGULATION A — CONDITIONAL SMALL ISSUES EXEMPTION

§230.251 Scope of exemption.

A public offer or sale of securities that meets the following terms and conditions shall be exempt under section 3(b) from the registration requirements of the Securities Act of 1933 (the “Securities Act”):

- (a) *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 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.*];
 - (5) is not issuing fractional undivided interests in oil or gas rights as defined in §230.300, or a similar interest in other mineral rights; and
 - (6) is not disqualified because of §230.262.
- (b) *Aggregate Offering Price.* The sum of all cash and other consideration to be received for the securities (“aggregate offering price”) shall not exceed \$5,000,000, including no more than \$1,500,000 offered by all selling security holders, less the aggregate offering price for all securities sold within the twelve months before the start of and during the offering of securities in reliance upon Regulation A. No affiliate resales are permitted if the issuer has not had net income from continuing operations in at least one of its last two fiscal years.

NOTE: Where a mixture of cash and non-cash consideration is to be received, 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 a currency exchange rate in effect on or at a reasonable time prior to 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. Valuations of non-cash consideration must be reasonable at the time made.

- (c) *Integration with Other Offerings.* Offers and sales made in reliance on this 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 §230.254(d);
 - (ii) made in reliance on §230.701;
 - (iii) made pursuant to an employee benefit plan;
 - (iv) made in reliance on Regulation S [§230.901-904]; or
 - (v) made more than six months after the completion of the Regulation A offering.

NOTE: If the issuer offers or sells securities for which the safe harbor rules are unavailable, such offers and sales still may not be integrated with the Regulation A offering, depending on the particular facts and circumstances. *See* Securities Act Release No. 4552 (November 6, 1962) [27 FR 11316].

- (d) *Offering Conditions.*
 - (1) *Offers.*
 - (i) Except as allowed by §230.254, no offer of securities shall be made unless a Form 1-A offering statement has been filed with the Commission.
 - (ii) After the Form 1-A offering statement has been filed:

- (A) oral offers may be made;
- (B) written offers under §230.255 may be made;
- (C) printed advertisements may be published or radio or television broadcasts made, if they state from whom a Preliminary Offering Circular or Final Offering Circular may be obtained, and contain no more than the following information:

- (1) the name of the issuer of the security;
- (2) the title of the security, the amount being offered and the per unit offering price to the public;
- (3) the general type of the issuer's business; and
- (4) a brief statement as to the general character and location of its property.

(iii) after the Form 1-A offering statement has been qualified, other written offers may be made, but only if accompanied with or preceded by a Final Offering Circular.

(2) *Sales.*

(i) No sale of securities shall be made until:

- (A) the Form 1-A offering statement has been qualified;
- (B) a Preliminary Offering Circular or Final Offering Circular is furnished to the prospective purchaser at least 48 hours prior to the mailing of the confirmation of sale to that person; and
- (C) a Final Offering Circular is delivered to the purchaser with the confirmation of sale, unless it has been delivered to that person at an earlier time.

(ii) Sales by a dealer (including an underwriter no longer acting in that capacity for the security involved in such transaction) that take place within 90 days after the qualification of the Regulation A offering statement may be made only if the dealer delivers a copy of the current offering circular to the purchaser before or with the confirmation of sale. The issuer or underwriter of the offering shall provide requesting dealers with reasonable quantities of the offering circular for this purpose.

(3) *Continuous or delayed offerings.* Continuous or delayed offerings may be made under this Regulation A if permitted by §230.415.

§230.252 Offering Statement.

- (a) *Documents to be Included.* The offering statement consists of the facing sheet of Form 1-A [§239.90 of this chapter], the contents required by the form and any other material information necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.
- (b) *Paper, printing, language and pagination.* The requirements for offering statements are the same as those specified in §230.403 for registration statements under the Act.
- (c) *Confidential treatment.* A request for confidential treatment may be made under §230.406 for information required to be filed, and §200.83 of this chapter for information not required to be filed.
- (d) *Signatures.* The issuer, its Chief Executive Officer, Chief Financial Officer, a majority of the members of its board of directors or other governing body, and each selling security holder shall sign the offering statement. If a signature is by a person on behalf of any other person, evidence of authority to sign shall be filed, except where an executive officer signs for the issuer. If the issuer is Canadian, its authorized representative in the United States shall sign. If the issuer is a limited partnership, a majority of the board of directors of any corporate general partner also shall sign.
- (e) *Number of copies and where to file.* Seven copies of the offering statement, at least one of which is manually signed, shall be filed with the Commission's main office in Washington, D.C.
- (f) [Removed and Reserved]
- (g) *Qualification.*
 - (1) If there is no delaying notation as permitted by paragraph (g)(2) of this section or suspension proceeding under §230.258, an offering statement is qualified without Commission action on the 20th calendar day after its filing.
 - (2) An offering statement containing the following notation can be qualified only by order of the Commission, unless such notation is removed prior to Commission action as described in paragraph (g)(3) of this section:

This offering statement shall only be qualified upon order of the Commission, unless a subsequent amendment is filed indicating the intention to become qualified by operation of the terms of Regulation A.

- (3) The delaying notation specified in paragraph (g)(2) of this section can be removed only by an amendment to the offering statement that contains the following language:

This offering statement shall become qualified on the 20th calendar day following the filing of this amendment.

(h) *Amendments.*

- (1) If any information in the offering statement is amended, an amendment, signed in the same manner as the initial filing, shall be filed. Seven copies of every amendment shall be filed with the Commission's main office in Washington, D.C. Subsequent amendments to an offering shall recommence the time period for qualification.
- (2) An amendment to include a delaying notation pursuant to paragraph (g)(2) or to remove one pursuant to paragraph (g)(3) of this section after the initial filing of an offering statement may be made by telegram, letter or facsimile transmission. Each such telegraphic amendment shall be confirmed in writing within a reasonable time by filing a signed copy. Such confirmation shall not be deemed an amendment.

§230.253 Offering Circular.

- (a) *Contents.* An offering circular shall include the narrative and financial information required by Form 1-A.

(b) *Presentation of Information.*

- (1) Information in the offering circular shall 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 requirements applicable to printed documents by presenting all required information in a format readily communicated to investors.

- (c) *Date.* An offering circular shall be dated approximately as of the date of the qualification of the offering statement of which it is a part.

- (d) *Cover page legend.* The cover page of every offering circular shall display the following statement in capital letters printed in boldfaced type at least as large as that used generally in the body of such offering circular:

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 SELLING LITERATURE. 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 HEREUNDER ARE EXEMPT FROM REGISTRATION.

(e) *Revisions.*

- (1) An offering circular shall be revised during the course of an offering whenever the information it contains has become false or misleading in light of existing circumstances, material developments have occurred, or there has been a fundamental change in the information initially presented.
- (2) An offering circular for a continuous offering shall be updated to include, among other things, updated financial statements, 12 months after the date the offering statement was qualified.
- (3) Every revised or updated offering circular shall be filed as an amendment to the offering statement and requalified in accordance with §230.252.

§230.254 Solicitation of Interest Document for Use Prior to an Offering Statement.

- (a) An issuer may publish or deliver to prospective purchasers a written document or make scripted radio or television broadcasts to determine whether there is any interest in a contemplated securities offering. Following submission of the written document or script of the broadcast to the Commission, as required by paragraph (b) of this section, oral communications with prospective investors and other broadcasts are permitted. The written documents, broadcasts and oral communications are each subject to the antifraud provisions of the federal securities laws. No solicitation or acceptance of money or other consideration, nor of any commitment, binding or otherwise, from any prospective investor is permitted. No sale may be made until qualification of the offering statement.
- (b) While not a condition to any exemption pursuant to this section:
 - (1) On or before the date of its first use, the issuer shall submit a copy of any written document or the script of any broadcast with the Commission's main office in Washington, D.C. (Attention: Office of Small Business Review). The document or broadcast script shall either contain or be accompanied by the name and telephone number of a person able to answer questions about the document or the broadcast.

NOTE: Only solicitation of interest material that contains substantive changes from or additions to previously submitted material needs to be submitted.

- (2) The written document or script of the broadcast shall:
 - (i) state that no money or other consideration is being solicited, and if sent in response, will not be accepted;
 - (ii) state that no sales of the securities will be made or commitment to purchase accepted until delivery of an offering circular that includes complete information about the issuer and the offering;
 - (iii) state that an indication of interest made by a prospective investor involves no obligation or commitment of any kind; and
 - (iv) identify the chief executive officer of the issuer and briefly and in general its business and products.
- (3) Solicitations of interest pursuant to this provision may not be made after the filing of an offering statement.
- (4) Sales may not be made until 20 calendar days after the last publication or delivery of the document or radio or television broadcast.
- (c) Any written document under this section may include a coupon, returnable to the issuer indicating interest in a potential offering, revealing the name, address and telephone number of the prospective investor.
- (d) Where an issuer has a bona fide change of intention and decides to register an offering after using the process permitted by this section without having filed the offering statement prescribed by §230.252, the Regulation A exemption for offers made in reliance upon this section will not be subject to integration with the registered offering, if at least 30 calendar days have elapsed between the last solicitation of interest and the filing of the registration statement with the Commission, and all solicitation of interest documents have been submitted to the Commission. With respect to integration with other offerings, see §230.251(c).
- (e) Written solicitation of interest materials submitted to the Commission and otherwise in compliance with this section shall not be deemed to be a prospectus as defined in Section 2(10) of the Securities Act (15 U.S.C. 77b(10)).

§230.255 Preliminary Offering Circulars.

- (a) Prior to qualification of the required offering statement, but after its filing, a written offer of securities may be made if it meets the following requirements:
 - (1) The outside front cover page of the material bears the caption "Preliminary Offering Circular," the date of issuance, and the following statement, which shall run along the left hand margin of the page and be printed perpendicular to the text, in boldfaced type at least as large as that used generally in the body of such offering circular:

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 prior to the time an offering circular which is not designated as a Preliminary Offering Circular is delivered and the offering statement filed with the Commission becomes qualified. This Preliminary Offering Circular shall not constitute an offer to sell or the

solicitation of an offer to buy nor shall there be any sales of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the laws of any such state.

- (2) The Preliminary Offering Circular contains substantially the information required in an offering circular by Form 1-A (§239.90 of this chapter), except that information with respect to offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversions rates, call prices, or other matters dependent upon the offering price may be omitted. The outside front cover page of the Preliminary Offering Circular shall include a bona fide estimate of the range of the maximum offering price and maximum number of shares or other units of securities to be offered or a bona fide estimate of the principal amount of debt securities to be offered.
 - (3) The material is filed as a part of the offering statement.
- (b) If a Preliminary Offering Circular is inaccurate or inadequate in any material respect, a revised Preliminary Offering Circular or a complete Offering Circular shall be furnished to all persons to whom securities are to be sold at least 48 hours prior to the mailing of any confirmation of sale to such persons, or shall be sent to such persons under such circumstances that it would normally be received by them 48 hours prior to receipt of confirmation of the sale.

§230.256 Filing of Sales Material.

While not a condition to an exemption pursuant to this provision, seven copies of any advertisement or written communication, or the script of any radio or television broadcast, shall be filed with the main office of the Commission in Washington, D.C.

NOTE: Only sales material that contains substantive changes from or additions from previously filed material needs to be filed.

§230.257 Reports of Sales and Use of Proceeds.

While not a condition to an exemption pursuant to this provision, the issuer and/or each selling security holder shall file seven copies of a report concerning sales and use of proceeds on Form 2-A [239.91 of this chapter], or other prescribed form with the main office of the Commission in Washington, D.C. This report shall be filed at the following times:

- (a) every six months after the qualification of the offering statement or any amendment until substantially all the proceeds have been applied; and
- (b) within 30 calendar days after the termination, completion or final sale of securities in the offering, or the application of the proceeds from the offering, whichever is the latest event. This report should be labelled the final report. For purposes of this section, the temporary investment of proceeds pending final application shall not constitute application of the proceeds.

§230.258 Suspension of the Exemption.

- (a) 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 the Regulation have not been complied with, including failures to provide the Commission a copy of the document or broadcast script under §230.254, to file any sales material as required by §230.256 or report as required by §230.257;
 - (2) the offering statement, any sales or solicitation of interest material 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 which would have rendered the exemption hereunder unavailable if it had occurred prior to such filing;
 - (5) any person specified in paragraph (a) of §230.262 has been indicted for any crime or offense of the character specified in paragraph (a)(3) of §230.262, 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 paragraph (a)(4) of §230.262;
 - (6) any person specified in paragraph (b) of §230.262 has been indicted for any crime or offense of the character specified in paragraph (b)(1) of §230.262, 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 paragraph (b)(2) of §230.262; or

- (7) 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) 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 security holder:
 - (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) 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) 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) All notices required by this section shall be given by personal service, registered or certified mail to the addresses given by the issuer, any underwriter and any selling security holder in the offering statement.

§230.259 Withdrawal or Abandonment of Offering Statements.

- (a) If none of the securities which are the subject of an offering statement have been sold and such offering statement is not the subject of a proceeding under §230.258, the offering statement may be withdrawn with the Commission's consent. The application for withdrawal shall state the reason the offering statement is to be withdrawn, shall be signed by an authorized representative of the issuer and shall be provided to the main office of the Commission in Washington, D.C.
- (b) 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, proceed in the following manner to determine whether such offering statement has been abandoned by the issuer. If the offering statement has been amended, the 9-month period shall be computed from the date of the latest amendment.
 - (1) Notice will be sent to the issuer, and to any counsel for the issuer named in the offering statement, by registered or certified mail, return receipt requested, addressed to the most recent addresses for the issuer and issuer's counsel as reflected in the offering statement. Such notice will inform the issuer and issuer's counsel that the offering statement or amendments thereto is out of date and must be either amended to comply with applicable requirements of Regulation A or be withdrawn within 30 calendar days after the notice.
 - (2) If the issuer or issuer's counsel fail to respond to such notice by filing a substantive amendment or withdrawing the offering statement or does not furnish a satisfactory explanation as to why the issuer has not done so within 30 calendar days, the Commission may declare the offering statement abandoned.

§230.260 Insignificant Deviations from a Term, Condition or Requirement of Regulation A.

- (a) 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:
 - (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 paragraphs (a), (b), (d)(1) and (3) of §230.251 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) A transaction made in reliance upon Regulation A shall comply with all applicable 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 Act.
- (c) This provision provides no relief or protection from a proceeding under §230.258.

§230.261 Definitions.

As used in this Regulation A, all terms have the same meanings as in §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) *Final Offering Circular.* The current offering circular contained in a qualified offering statement;
- (b) *Preliminary Offering Circular.* The offering circular described in §230.255(a).

§230.262 Disqualification Provisions.

Unless, upon a showing of good cause and without prejudice to any other action by the Commission, the Commission determines that it is not necessary under the circumstances that the exemption provided by this Regulation A be denied, the exemption shall not be available for the offer or sale of securities, if:

- (a) the issuer, any of its predecessors or any affiliated issuer:
 - (1) has filed a registration statement which is the subject of any pending proceeding or examination under section 8 of the Act, or has been the subject of any refusal order or stop order thereunder within 5 years prior to the filing of the offering statement required by §230.252;
 - (2) is subject to any pending proceeding under §230.258 or any similar section adopted under section 3(b) of the Securities Act, or to an order entered thereunder within 5 years prior to the filing of such offering statement;
 - (3) has been convicted within 5 years prior to the filing of such offering statement of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission;
 - (4) is subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, entered within 5 years prior to the filing of such offering statement, permanently restraining or enjoining, such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the Commission; or
 - (5) is subject to a United States Postal Service false representation order entered under 39 U.S.C. §3005 within 5 years prior to the filing of the offering statement, or is subject to a temporary restraining order or preliminary injunction entered under 39 U.S.C. §3007 with respect to conduct alleged to have violated 39 U.S.C. §3005. The entry of an order, judgment or decree against any affiliated entity before the affiliation with the issuer arose, if the affiliated entity is not in control of the issuer and if the affiliated entity and the issuer are not under the common control of a third party who was in control of the affiliated entity at the time of such entry does not come within the purview of this paragraph (a) of this section.
- (b) any director, officer or general partner of the issuer, beneficial owner of 10 percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter:
 - (1) has been convicted within 10 years prior to the filing of the offering statement required by §230.252 of any felony or misdemeanor in connection with the purchase or sale of any security, involving the making of a false filing with the Commission, or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser;
 - (2) is subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily enjoining or restraining, or is subject to any order, judgment, or decree of any court of competent jurisdiction, entered within 5 years prior to the filing of such offering statement, permanently enjoining or restraining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security, involving the making of a false filing with the Commission, or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser;

- (3) is subject to an order of the Commission entered pursuant to section 15(b), 15B(a), or 15B(c) of the Exchange Act, or section 203(e) or (f) of the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 *et seq.*];
 - (4) is suspended or expelled from membership in, or suspended or barred from association with a member of, a national securities exchange registered under section 6 of the Exchange Act or a national securities association registered under section 15A of the Exchange Act for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade; or
 - (5) is subject to a United States Postal Service false representation order entered under 39 U.S.C. §3005 within 5 years prior to the filing of the offering statement required by §230.252, or is subject to a restraining order or preliminary injunction entered under 39 U.S.C. §3007 with respect to conduct alleged to have violated 39 U.S.C. §3005.
- (c) any underwriter of such securities was an underwriter or was named as an underwriter of any securities:
- (1) covered by any registration statement which is the subject of any pending proceeding or examination under section 8 of the Act, or is the subject of any refusal order or stop order entered thereunder within 5 years prior to the filing of the offering statement required by §230.252; or
 - (2) covered by any filing which is subject to any pending proceeding under §230.258 or any similar rule adopted under section 3(b) of the Securities Act, or to an order entered thereunder within 5 years prior to the filing of such offering statement.

§ 230.263 Consent to Service of Process.

- (a) If the issuer is not organized under the laws of any of the states of or the United States of America, it shall at the time of filing the offering statement required by § 230.252, furnish to the Commission a written irrevocable consent and power of attorney on Form F-X [§ 239.42 of this chapter].
- (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.