amendment was not objectionable, so long as it did not prohibit depository institutions from giving multiple premiums if the depositor independently decides to open multiple accounts.

With respect to the request for alternative methods of preventing the circumvention of premiums rules, 73 institutions suggested that premiums be banned completely. Another alternative recommended by 53 institutions was that premiums be permitted on a per depositor/per household basis instead of a per account basis. In addition to the recommendation that premiums be permitted on a per depositor/per household basis, 41 institutions pointed out that this alternative would be too costly and too difficult to monitor and administer. Several of these institutions also expressed the opinion that this alternative would create depositor disloyalty, prompting depositors to deposit their funds at several different depository institutions in order to obtain additional premiums. It was also suggested that premiums be limited to branch openings, bank openings, anniversaries, mergers and consolidations; 20 institutions recommended this alternative.

Based upon the comments received and the Committee's experience with the temporary rule, the Committee concluded that the final adoption of the rule would be the most effective means of curtailing the circumvention of the premium rule and would enable depository institutions to provide premiums to customers in the manner the Committee intended. With respect to the alternatives suggested by the commentators to prevent further abuses of the objectives of the premium rule, the Committee believes that making the temporary rule permanent would be more effective in advancing its objectives. This is based on the view that adoption of a per depositor/per household rule would be both a financial and administrative burden for depository institutions to implement and would not directly address the immediate problem of soliciting the opening of multiple accounts by depository institutions.

PART 1204—INTEREST ON DEPOSIT

Pursuant to its authority under the Depository Institutions Deregulation Act (12 U.S.C. 3501 *et seq.*), the Committee amends Part 1204 (Interest on Deposits) by adding the following sentence to § 1204.109(a):

§1204.109 Premiums not considered payment of interest.

(a) * * * A depository institution is not permitted directly or indirectly to solicit or promote deposits from customers on the basis that the funds will be divided into more than one account by the institution for the purpose of providing more than two premiums per deposit within a 12-month period.

* * * * *

By order of the Committee.

Steven Skancke,

Executive Secretary.

March 9, 1982.

[FR Doc. 82-7039 Filed 3-15-82; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 370, 371, 373, 376, 379, 385, 386, and 399

Expansion of Foreign Policy Export Controls Affecting Libya

AGENCY: Office of Export Administration International Trade Administration, Commerce.

ACTION: Interim rule.

SUMMARY: The President has directed that additional measures be taken to restrict a U.S. contribution to, and thereby to limit, Libyan capacity to engage in activities detrimental to the foreign policy of the United States. This issuance revises the Export Administration Regulations to place Libya in Country Group S and make other related changes.

DATES: These rules are effective March 12, 1982. Comments must be received by the Department by May 11, 1982.

ADDRESS: Written comments (six copies when possible) should be sent to: Richard J. Isadore, Director, Operations Division, Office of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Mr. Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, Department of Commerce, Washington, D.C. 20230 (Telephone: (202) 377-5247 or 377-4811).

SUPPLEMENTARY INFORMATION:

Regulatory Changes

Pursuant to the authority granted by section 6 of the Export Administration Act of 1979, the President has determined that foreign policy controls affecting exports to Libya should be expanded. Libya has been placed in Country Group S, with a validated export license now required for all technical data and commodities except:

1. Medicine and medical supplies;
2. Food and other agricultural commodities;
3. Items permitted under certain special purpose general licenses (including technical data freely available to the public); and
4. The export to Libya of nonstrategic foreign-produced direct product of U.S. origin technical data.

Existing controls for Libya affecting off-highway wheel tractors and aircraft continue in effect, as do existing controls for anti-terrorism purposes. Commodities and related technical data controlled for national security purposes, and oil and gas equipment and technical data not readily available abroad, will generally be denied except, on a case by case basis, for:

1. Export under existing contracts, where failure to obtain a license would not excuse performance under the contract;
2. Reexports of goods or technology not controlled for national security purposes which are already outside the United States on the effective date or exports of foreign products incorporating such items as components;
3. The use of 20 percent or less, by value, of U.S. origin components in foreign origin equipment.

Also, authorizations may be considered favorably for the reexport of goods and technical data controlled for national security purposes and exported prior to March 12, 1982, and other unusual situations such as transactions involving preexisting contractual commitments entered into prior to the effective date.

Validated export licenses issued prior to the effective date of these revisions are not affected. Exporters of items subject to the above denial policy, who have contracts entered into prior to the effective date of these revisions should, where appropriate, include certified copies of the contracts with their export license applications. In addition, exporters of oil and gas equipment and data should include any available evidence of foreign availability. Parties requesting authorization for reexport of national security controlled goods or data or of oil and gas equipment or data, should include with their requests shipping documents establishing the date of export from the United States. Disclosure of information obtained in connection with license applications or reexport request is subject to the confidentiality provisions contained in

section 12(c) of the Export Administration Act of 1979, as amended.

Parties who have exported commodities to Libya under General License GTE are notified that this general license may not be used for exports to Country Group S. Such commodities must be removed from Libya immediately, unless authorization for retention in Libya is received from the Office of Export Administration. Exporters holding Distribution Licenses are advised that these licenses are no longer valid for exports to Libya. Existing Project Licenses will not be affected by this change. Requests for amendments or extentions of Project Licenses will be reviewed on a case by case basis.

Saving Clause

This rule places a validated license requirement on certain commodities and technical data that previously could be exported under a general license. In addition it prohibits the use of Distribution Licenses for Libya. Therefore, shipments of commodities or technical data removed from general license or Distribution License, as a result of changes set forth in this rule that were on dock for lading, on lighter laden aboard an exporting carrier, or in transit to a port of export pursuant to actual orders for export prior to 8:00 a.m., E.S.T., March 12, 1982, may be exported under the existing applicable license provision up to and including March 26, 1982. Any such shipments not laden aboard the exporting carrier on or before March 26, 1982 require an individual validated license for export.

Statutory Requirements

Pursuant to section 6 of the Export Administration Act of 1979 and following consultation with the Department of State, it has been determined that this rule is necessary to further significantly, the foreign policy of the United States. Appropriate persons in industry and the Congress have been consulted, and the criteria set forth in section 6(b) of the Act have been considered.

Pursuant to section 4(c), it has been determined that, notwithstanding foreign availability, failure to take this action would be detrimental to the foreign policy of the United States.

Pursuant to section 6(d), it has been determined that there are no feasible alternative means of achieving the purpose of this action. As provided in section 6(g) efforts have been made to obtain cooperation of countries that produce comparable items.

Rulemaking Requirements

The Office of Export Administration has determined that:

1. Under section 13(a) of the Export Administration Act of 1979 (50 U.S.C. app. 2401 *et seq.* (Supp. III 1979) ("the Act")), this rule is exempt from the public participation in rulemaking procedures of the Administrative Procedure Act.

However, because of the importance of the issues raised by these regulations and the intent of Congress set forth in section 13(b) of the Act, these regulations are issued in interim form and comments will be considered in developing any final regulations. These regulations may be revised before the end of the comment period. Accordingly, interested persons who desire to comment are encouraged to do so at the earliest possible time to permit the fullest consideration of their views.

2. This rule does not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

3. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 3501 *et seq.*

4. This rule is exempt from the requirements of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation," because it relates to a foreign affairs function of the United States.

The period for submission of comments will close on May 11, 1982. Comments received after the close of the comment period cannot be assured consideration in the development of the final regulations. Public comments that are accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature, or for any other reason, will not be accepted. Such comments and materials will be returned to the submitter and will not be considered in the development of the final regulations. All public comments to be considered in any revision to these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received, they must be followed by written memoranda that will also be a matter of public record and will be available for public review. Communications from agencies of the United States Government or foreign governments and proprietary information received during industry consultations will not be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration, Freedom of Information Records Inspection Facility, Room 3102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230

Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Mrs. Patricia L. Mann, the International Trade Administration, Freedom of Information Officer, at the above address or by calling (202) 377-3031.

Accordingly, the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

PART 370—EXPORT LICENSING GENERAL POLICY AND RELATED INFORMATION

Supplement No. 1 to Part 370 [Amended]

1. Supplement No. 1 to Part 370 is amended by inserting "Libya" under "Country Group S, " which previously had been reserved.

PART 371—GENERAL LICENSES

§ 371.15 [Amended]

2. Paragraph 371.15(b) is amended by removing the phrase "S or".

PART 373—SPECIAL LICENSING PROCEDURES

3. Paragraph 373.2(b) is amended by removing the "or" at the end of § 373.2(b) (6), removing the period at the end of § 373.2(b) (7) and replacing it with a semicolon followed by the word "or", and adding a new § 373.2(b) (8) to read as follows:

§ 373.2 [Amended]

* * * * *

(b) * * *

(8) The project involves shipments to Libya.

PART 376—SPECIAL COMMODITY POLICIES AND PROVISIONS

§ 376.16 [Amended]

4. Section 376.16 is amended by removing the semicolon and the word "and" at the end of § 376.16(a) and inserting a period, and by removing §§ 376.16(b) and 376.16(c).

PART 379—TECHNICAL DATA

§ 379.4 [Amended]

5. Section 379.4(f) is amended by inserting "S," between "Q," and "W," each time they appear in the series "P, Q, W, Y, or Afghanistan" or "P, Q, W, Y, or Z or Afghanistan" (nine insertions).

PART 385—SPECIAL COUNTRY POLICIES AND PROVISIONS

§ 385.4 [Amended]

6. Section 385.4(d) is amended by removing "Libya," once in the title and once in the first sentence, and adding a footnote to the title to read: "Although not in Country Group V, the provisions of this paragraph remain applicable to Libya.".

7. Section 385.4(e) is removed and reserved.

8. A new § 385.7 is added to read as follows:

§ 385.7 Country Group S; Libya.

As authorized by section 6 of the Export Administration Act of 1979, the following special policies and procedures for commodities and technical data are in effect for Libya for foreign policy purposes.

(a) Except as stated below, a validated license or reexport authorization is required for all U.S.-orgin commodities or technical data, as well as foreign produced products of U.S. technical data exported from the United States after March 12, 1982 subject to national security controls for which written assurances against shipments to Libya are required under § 379.4 of the Export Administration Regulations. Excepted from this licensing requirement are medicines and medical supplies, food and other agricultural commodities, and commodities and data exported pursuant to special general licenses described in Parts 371 and 379. License applications and reexport requests will be reviewed in accordance with the licensing policies stated below.

(1) Licenses will generally be denied for:

(i) Items controlled for national security purposes and related technical data, including controlled foreign produced products of U.S. technical data exported from the United States after March 12, 1982; and

(ii) Oil and gas equipment and technical data, if determined by the Office of Export Administration not to be readily available from sources outside the United States.

(2) Notwithstanding the presumptions of denial in paragraph (a)(1) of this section:

(i) Licenses and authorizations generally will be issued when the transaction involves:

(A) The export or reexport of commodities or technical data under a contract in effect prior to March 12, 1982, where failure to obtain a license would not excuse performance under the contract;

(B) Reexport of goods or technical data not controlled for national security purposes that had been exported from the United States prior to March 12, 1982, or exports of foreign products incorporating such items as components; or

(C) Use of U.S. origin parts, components, or materials in foreign origin products destined for Libya, where the U.S. content is 20 percent or less by value.

(ii) Licenses and authorizations will generally be considered favorably on a case-by-case basis when the transaction involves:

(A) Reexports of goods or technical data subject to national security controls that were exported prior to March 12, 1982 and exports of foreign products incorporating such U.S.-origin components, where the particular authorization would not be contrary to specific foreign policy objectives of the United States; or

(B) Other unusual situations such as transactions involving firms with contractual commitments in effect before March 12, 1982.

(3) All other exports and reexports will generally be approved, subject to any other licensing policies applicable to a particular transaction.

(b) Libya has been designated by the Secretary of State as a nation repeatedly supporting acts of international terrorism. For licensing requirements relating to Anti-Terrorism Controls see 15 CFR 385.4(d).

(c) A validated license is required for the export to Libya of off-highway wheel tractors of carriage capacity of 10 tons or more, as defined in CCL entry 6490F. Applications for validated licenses will generally be considered favorably on a case-by-case basis for the export of such tractors in reasonable quantities if for civil use.

(d) A validated license is required for foreign policy purposes for the export or reexport to Libya of any aircraft (including helicopters) and any parts and accessories controlled under ECCN's 1460A, 4460B, 5460F, 6460F, 1485A, and 1501A(a), (b)(1) and (c)(1). This control includes any such aircraft parts intended for use in the manufacture, overhaul, or rehabilitation in any third country of aircraft that will be exported or reexported to Libya or Libyan nationals. Applications for validated licenses will generally be approved on a case-by-case basis for aircraft unlikely to be diverted to military use because they are destined to a priority civil use. Applications will generally be denied for exports that would constitute a high risk of increasing Libyan capabilities to carry military cargo or troops or to conduct military reconnaissance or observation missions.

(e) In appropriate cases, applications for licenses and requests for extensions of licenses under paragraph (a) of this section must be accompanied by a certified true copy of a contract entered into prior to March 12, 1982. Where the custom in an industry is to rely upon agreements other than contracts, substitute documentation will be considered on a case-by-case basis. Requests for authorization to reexport must be accompanied by shipping documents establishing the date of export from the United States.

(f) Commodities and technical data subject to more than one type of control (e.g., national security, anti-terrorism, regional stability, nuclear nonproliferation) will be reviewed under all applicable standards. The most restrictive standard will be applied.

PART 386—EXPORT CLEARANCE

§ 386.6 [Amended]

9. Sections 386.6(d)(2)(i)(*b*) and 386.6(d)(3) are amended by inserting "Libya," between "Republic of China," and "North Korea" in each place.

PART 399—COMMODITY CONTROL LIST AND RELATED MATTERS

Supplement No. 1 to § 399.1 [Amended]

10. Supplement No. 1 to § 399.1 is amended by adding a new footnote to ECCN 6999G, in the "Validated License Required" column, to read as follows:

Food, agricultural commodities, and medicines and medical supplies may be exported to Country Group S under General License G-Dest.

(Secs. 4, 6, 13, 15, and 21, Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.*; Executive Order No. 12214 (45 FR 29783, May 6, 1980); Department Organization Order 10-3 (45 FR 6141, January 25, 1980); International Trade Administration Organization and Function Orders 41-1 (45 FR 11862, February 22, 1980) and 41-4 (45 FR 65003, October 1, 1980))

Dated: March 11, 1982.

Bohdan Denysyk,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 82-7113 Filed 3-12-82; 10:40 am]

BILLING CODE 3510-25-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 155

Execution of Discretionary Orders by Floor Brokers; Exception to the Hand-Off Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Interpretation.

SUMMARY: The Commodity Futures Trading Commission is issuing an interpretation of its regulation § 155.2(c). The regulation requires each contract market to adopt rules which prevent a floor broker who has discretionary authority over a customer's account from executing an order for that account without the prior specific consent of the customer. Under the regulation the floor broker is required to hand off orders he originates to another floor broker for execution. In a previous interpretation of regulation § 155.2(c) the Commission stated that orders which give a floor broker discretion as to the time and price of a futures transaction need not be handed off to another floor broker. In a recent rule submission a contract market requested Commission approval of a rule which would permit a broker to have discretion as to time, price and contract month in a futures transaction without handing off the order to another floor broker. The Commission has approved this rule and is notifying the public of the change in the Commission's interpretation of regulation § 155.2(c).

EFFECTIVE DATE: This interpretation is effective March 16, 1982.

FOR FURTHER INFORMATION CONTACT: Stephen Braverman, Futures Trading Specialist, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone (202) 254-8955.

SUPPLEMENTARY INFORMATION: Commission regulation § 155.2, 17 CFR 155.2 (1981), states:

> Each contract market shall adopt and submit to the Commission for approval pursuant to section 5a(12) of the (Commodity Exchange) Act and § 1.41 of the regulations, a set of rules which shall, at a minimum, with respect to each member of the contract market acting as a floor broker:
>
> * * * * *
>
> (c) Prohibit such member from executing any transaction for any account of another person for which buying and/or selling orders can be placed or originated, or for which transactions can be executed, by such member without the prior specific consent of the account owner, regardless of whether the general authorization for such orders or transactions is pursuant to a written agreement, except that orders for such an account may be placed with another member for execution.

When the Commission adopted this regulation it stated:

> Regulation § 155.2(c) is designed to prevent floor brokers from placing their personal trading interests ahead of their customers' interests when exercising trading discretion over such customers' accounts. Effective surveillance over such discretionary trading necessitates the requirement that all orders for an account for which a floor broker can place an order without first obtaining the account owner's specific consent to place that particular order be placed with another floor broker for execution. However, the newly adopted regulation makes it clear that a contract market need only prohibit its members form executing orders for accounts over which they have discretionary authority where that discretionary authority is such that the floor broker may originate orders for those accounts. This prohibition need not extend to accounts where the floor broker's discretion is limited to such things as the selection of the precise time and price at which an order originated by a customer is executed.[1]

The Commission also stated in a subsequent interpretive statement on regulation § 155.2(c):

> A question has arisen as to whether a floor broker may execute any . . . type of discretionary order [other than for time and price] and still be in compliance with § 155.2(c). The reason for the Commission's determination regarding price and time discretion orders was that the customer has limited the floor broker's discretion when he gives the broker only time and price discretion.
>
> In these situations the customer actually originates the order, not the floor broker. However, the more details of the order the broker decides the greater his exercise of discretion and the greater the potential for abuse that regulation § 155.2(c) is designed to prevent. Therefore, as interpreted by the Commission, regulation § 155.2(c) requires that discretionary orders giving the broker more latitude than price and time discretion must be handed off for execution.[2]

In a recent submission of a rule for Commission approval pursuant to section 5a(12) of the Commodity Exchange Act [3] the Board of Trade of the City of Chicago ("CBT") petitioned the Commission for a partial exemption from the requirements of regulation § 155.2(c).[4] The CBT requested that the Commission approve a rule which permits a floor broker to have discretion as to contract month, in addition to time and price, without handing off an order. The Commission gave careful consideration to the CBT's request and, notwithstanding its previous interpretive statement, now believes that contract month discretion also should be permitted under regulation § 155.2(c).

Regulation § 155.2(c) recognizes the significant conflicts of interest which arise from permitting a floor broker to trade both in his own account and for the accounts of customers and was designed to prevent such floor brokers from allocating profitable trades to their personal trading account or accounts of favored customers to the detriment of orders for customers' discretionary accounts. However, upon reconsidering its previous position, the Commission does not believe that allowing a floor broker to execute a customer-originated order which gives him contract month discretion in addition to time and price discretion is any more likely to result in the abuses regulation § 155.2(c) seeks to prevent than if the floor broker has only time and price discretion. In both cases the orders would be executable at the market price and, under exchange rules required by regulations § 155.2 (a) and (b), 17 CFR 155.2 (a) and (b) (1981),[5] the floor broker would be required to execute these customers' orders before

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[1] 41 FR 56134, 56136 (December 23, 1976).

[2] 42 FR 35004 (July 7, 1977).

[3] 7 U.S.C. 7a(12) (1976).

[4] The petition was submitted pursuant to Commission regulation § 155.10, 17 CFR 155.10 (1981).

[5] Regulations § 155.2 (a) and (b) provide:

> Each contract market shall adopt and submit to the Commission for approval pursuant to section 5a(12) of the Act and § 1.41 of the regulations, a set of rules which shall, at a minimum, with respect to each member of the contract market acting as floor broker:
>
> (a) Prohibit such member from purchasing any commodity for future delivery for his own account, or for any account in which he has an interest, while holding an order of another person for the purchase of the same commodity which is executable at the market price or at the price at which such purchase can be made for the member's own account or the account in which he has an interest.
>
> (b) Prohibit such member from selling any commodity for future delivery for his own account, or for any account in which he has an interest, while holding an order of another person for the sale of the same commodity which is executable at the market price or at the price at which such sale can be made for the member's own account or the account in which he has an interest.

his personal trades. Given the current scope of floor brokers' authority to handle customers' orders while trading for their own accounts, the Commission sees no relevant distinction between trades executed by a floor broker which allow only time and price discretion and those which permit the broker the additional latitude to select the contract month.

Indeed, a customer may be placed at a competitive disadvantage if he gives his floor broker contract month discretion and the broker is required to hand off that order once he selects the contract month.[6] For example, a hedging customer may wish to offset a cash position in either of a number of months, and may instruct his broker to sell the month in which he can get the best price. If the floor broker is required to hand off this order after he has selected the most advantageous month for his customer, the chance of the order being filled at the best price may be decreased by the delay resulting from the hand off. In addition, there is the risk of the customer not being filled at all, leaving him unhedged.

Another example occurs when all the contract months in a commodity are limit up and a customer desires to buy a certain quantity, regardless of month. If the floor broker is required to hand off the customer's order after seeing a month begin to trade, the broker's customer runs the unnecessary risk of missing the offers available. Moreover, in a locked-limit situation such as this, it is quite likely that a broker could encounter some difficulty in attempting to hand off such an order.

For the foregoing reasons the Commission is amending its interpretive statement on the types of discretionary orders that a floor broker may execute under § 155.2(c). The Commission believes it is not inconsistent with § 155.2(c) for exchanges to adopt rules which allow floor brokers to execute orders where the broker has discretion as to contract month, as well as time and price, without handing off the order to another broker.

Issued in Washington, D.C. on March 10, 1982, by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 82-7015 Filed 3-15-82; 8:45 am]

BILLING CODE 6351-01-M

[6] The floor broker must select the contract month *prior* to handing off the order for execution; otherwise, the floor broker would merely be giving the executing broker the same discretion that the regulation was designed to prohibit.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 239

[Release No. 33-6389]

Revision of Certain Exemptions From Registration for Transactions Involving Limited Offers and Sales

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of final rules, rule amendments, and form, and rescission of rules and forms.

SUMMARY: The Commission announces the adoption of a new regulation governing certain offers and sales of securities without registration under the Securities Act of 1933 and a uniform notice of sales form to be used for all offerings under the regulation. The regulation replaces three exemptions and four forms, all of which are being rescinded. The new regulation is designed to simplify and clarify existing exemptions, to expand their availability, and to achieve uniformity between Federal and state exemptions in order to facilitate capital formation consistent with the protection of investors.

EFFECTIVE DATES: Regulation D, rule 215, Form D and amendments to rules 144 and 148 will be effective and Form 4(6) will be rescinded on April 15, 1982. Rules 146, 240, and 242, and Forms 146, 240, and 242 will be rescinded on June 30, 1982. For those offerings made in compliance with the terms of Rules 146, 240 and 242 which commence prior to the effective date of regulation D (April 15, 1982) and which continue past June 30, 1982, the Commission takes the administrative position that no registration is required under the Securities Act of 1933.

FOR FURTHER INFORMATION CONTACT: Prior to effective date, Paul A. Belvin (202) 272-2644, Office of Small Business Policy, and after effective date, David B. H. Martin, Jr. (202) 272-2573, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting regulation D (17 CFR 230.501-230.506), Rule 215 (17 CFR 230.215), Form D (17 CFR 239.500), and conforming amendments to rule 144 (17 CFR 230.144) and rule 148 (17 CFR 230.148) under the Securities Act of 1933 (the "Securities Act") (15 U.S.C. 77a *et seq.*, as amended). The Commission is rescinding Rules 146, 240 and 242 (17 CFR 230.146, 230.240, and 230.242) and Forms 146, 240, 242, and 4(6) (17 CFR 239.146, 239.240, 239.242, and 239.246).

The Commission published proposed regulation D for comment in Release No. 33-6339 (August 7, 1981) (46 FR 41791). Commentators generally supported the proposal. Many letters contained helpful analysis of and comment on specific sections in the proposed regulation. As adopted, regulation D is substantially similar to the proposal with certain changes made in response to comments received.

This release contains a general background of regulation D, an overview of its provisions, a discussion of the uniform federal-state exemptive framework, and a section-by-section synopsis of the final regulation.

I. Background

Regulation D is the product of the Commission's evaluation of the impact of its rules and regulations on the ability of small businesses to raise capital.[1] This study has revealed a particular concern that the registration requirements and the exemptive scheme of the Securities Act impose disproportionate restraints on small issuers. In response to this concern, the Commission has taken a number of actions, including a relaxation of certain aspects of regulation A (17 CFR 230.251-230.264), the adoption of Rule 242, and the introduction of Form S-18 (17 CFR 239.28), a simplified registration statement for certain first time issuers.[2]

Coincident with the Commission's small business program, Congress enacted the Small Business Investment Incentive Act of 1980 (the "Incentive Act") (94 Stat. 2275 (codified in scattered sections of 15 U.S.C.)). The Incentive Act included three changes to the Securities Act: the addition of an exemption in Section 4(6) for offers and sales solely to accredited investors,[3] the

[1] This evaluation began in April and May of 1978 when the Commission conducted 21 days of public hearings in six different cities for the purpose of determining the extent to which the burdens imposed on small businesses by the federal securities law could be alleviated consistent with the protection of investors. These hearings were recommended by the Advisory Committee on Corporate Disclosure. Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission, House Comm. on Interstate and Foreign Commerce, 95th Cong., 1st Sess. 511 (Comm. Print No. 95-29, 1977).

[2] For a summary of these and other actions, *see* Release No. 33-6339; Release No. 34-16866 (June 2, 1980) (45 FR 40145); and Release No. 33-6049 (April 3, 1979 (45 FR 21562).

[3] The Incentive Act also added Section 2(15) to the Securities Act which defined "accredited investor" as one of five enumerated institutional entities or any person who, on the basis of such factors as financial sophistication, net worth,

Continued

increase in the ceiling of Section 3(b) from $2,000,000 to $5,000,000, and the addition of Section 19(c) which, among other things, authorized "the development of a uniform exemption from registration for small issuers which can be agreed upon among several States or between the States and the Federal Government."

As a result of the Commission's reevaluation of the impact that its rules and regulations have on small businesses and the provisions of the Incentive Act, the Commission undertook a general examination of the exemptive scheme under the Securities Act. In December 1980, it announced that it was considering the relationship among certain exemptions from the registration provisions of the Securities Act and the efficacy of those exemptions as they relate to the capital formation needs of small businesses.[4] The Commission requested comments on the interrelationships between Section 4(6) and rules 146 and 242, as well as on the adequacy of the ceiling limitations in exemptions under Section 3(b).

Commentary to the Commission criticized the complexity of the exemptive scheme as it relates to all issuers. Recommendations for solutions varied considerably. Based on certain recommendations and its own analysis, the Commission issued proposed regulation D, which provides exemptions for certain offerings by small and other businesses.[5]

The Commission received 88 letters of comment on proposed regulation D.[6] Commentators generally supported adoption of the regulation but offered detailed and constructive suggestions as to specific provisions in the rules.[7]

II. Discussion

A. Overview

Regulation D is a series of six rules, designated rules 501–506, that establishes three exemptions from the registration requirements of the Securities Act and replaces exemptions that currently exist under rules 146, 240, and 242. The regulation is designed to simplify existing rules and regulations, to eliminate any unnecessary restrictions that those rules and regulations place on issuers, particularly small businesses, and to achieve uniformity between state and federal exemptions in order to facilitate capital formation consistent with the protection of investors.

Rules 501–503 set forth definitions, terms, and conditions that apply generally throughout the regulation. The exemptions of regulation D are contained in rules 504–506. Rules 504 and 505 replace rules 240 and 242, respectively, and provide exemptions from registration under Section 3(b) of the Securities Act. Rule 506 succeeds rule 146 and relates to transactions that are deemed to be exempt from registration under Section 4(2) of the Securities Act.

Rule 504 generally expands rule 240 by increasing the amount of securities sold in a 12 month period from $100,000 to $500,000, eliminating the ceiling on the number of investors, and removing the prohibition on payment of commissions or similar remuneration. Rule 504 also removes restrictions on the manner of offering and on resale if an offering is conducted exclusively in states where it is registered and where a disclosure document is delivered under the applicable state law. Like rule 240, rule 504 does not prescribe specific disclosure requirements. Rule 504 is an effort by the Commission to set aside a clear and workable exemption for small offerings by small issuers to be regulated by state "Blue Sky" requirements and to be subject to federal antifraud provisions and civil liability provisions such as section 12(2). Therefore, the exemption is not available to issuers that are subject to the reporting obligations of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a *et seq.*) or are investment companies as defined under the Investment Company Act of 1940 (the "Investment Company Act") (15 U.S.C. 80a–1 *et seq.).*

Rule 505 replaces rule 242. Its offering limit is $5,000,000 in a 6-month period, an increase from the $2,000,000 in 6 months ceiling in rule 242. Like its predecessor, rule 505 permits sales to 35 purchasers that are not accredited investors and to an unlimited number of accredited investors. However, the class of accredited investors has now been expanded. The exemption is available to all non-investment company issuers,[8] an expansion of the restriction in rule 242 that limited the exemption's availability to certain corporate entities. An issuer under rule 505 may not use any general solicitation or general advertising. The informational requirements under rule 505 are substantially similar to those in rule 242.

Rule 506 takes the place of rule 146. As under its predecessor, rule 506 is available to all issuers for offerings sold to not more than 35 purchasers. Accredited investors, however, do not count toward that limit. Rule 506 requires an issuer to make a subjective determination that each purchaser meets certain sophistication standards, a provision that narrows a similar requirement as to all offerees under rule 146. The new exemption retains the concept of the purchaser representative so that unsophisticated purchasers may participate in the offering if a purchaser representative is present. Like rule 146, rule 506 prohibits any general solicitation or general advertising.

B. Uniform Federal-State Limited Offering Exemptions

In conjunction with the proposal and adoption of regulation D, the Commission, through its Division of Corporation Finance, has coordinated with the North American Securities Administrators Association ("NASAA"),[9] through its Subcommittee on Small Business Financing ("NASAA Subcommittee"), under the authorization of Section 19(c)(3) of the Securities Act. The objective of this process has been to develop a basic framework of limited offering exemptions that can apply uniformly at the federal and state levels. Regulation D is intended to be the principal element of this framework. Under rule 504, offerings below $500,000 by a non-reporting company will not be required to be registered at the federal level. Moreover, if such offerings are registered in states requiring the delivery of a disclosure document, the manner of offering limitations and the restrictions on resale will not apply. Because of the small amount of the offering and the likelihood that sales will occur in a limited geographic area, the Commission and NASAA believe that greater reliance on state securities laws is appropriate. Rules 505 and 506, and applicable definitions, terms and

knowledge, and experience in financial matters, or amount of assets under management qualifies as an accredited investor under rules and regulations which the Commission shall prescribe.

The "accredited investor" concept had originally appeared in rule 242. *See* Release No. 33–6180 (January 17, 1980) (45 FR 6362); Release No. 33–6121 (September 11, 1979) (44 FR 54258).

[4] Release No. 33–6274 (December 23, 1980) (46 FR 2631).

[5] Release No. 33–6339 (August 7, 1981).

[6] These letters are available for inspection and copying in public File No. S7–891. A summary of the comments, prepared by the staff of the Commission's Division of Corporation Finance, has been placed in the public file.

[7] For additional and more detailed background information on Regulation D, *see* Release No. 33–6339 (August 7, 1981); Release No. 33–6274 (December 23, 1980).

[8] Like rule 242, rule 505 is not available to issuers that are subject to the disqualifications of regulation A.

[9] NASAA is a voluntary organization composed of securities regulatory agencies of 49 states, the Commonwealth of Puerto Rico, and Guam, as well as Mexico and 13 provinces of Canada.

conditions in rules 501–503, are intended to be uniform federal-state exemptions.

In October 1981, NASAA formally adopted a uniform limited offering exemption as an official policy guideline.[10] This exemption, which had two alternatives, was based on proposed Rule 505 of regulation D but differed from that provision in certain respects. Subsequent to the endorsement of the uniform exemption and considering the public comment received, the NASAA Subcommittee and the Division of Corporation Finance coordinated to minimize differences in the NASAA policy guideline and regulation D. The Commission understands that, following its adoption of regulation D, the NASAA Subcommittee will recommend adoption by NASAA of modifications to its uniform limited offering exemption to provide for a uniform exemptive system. This system will endorse rule 505 with certain additional terms as one option, and rules 505 and 506 with no changes as a second option.

The additional terms that NASAA is expected to consider involve the following: (1) Restriction on transaction related remuneration; (2) Disqualification of issuers and other persons associated with offerings on the basis of state administrative orders or judgments; (3) Qualification of investors based on the suitability of the investment; and (4) Requirements for filing of the notices of sales.

The Commission and NASAA do not believe that these additional terms detract from the goal of increased federal-state uniformity. Because of differences between federal and state securities regulation, complete uniformity may not be an attainable objective. Certain additional terms, for instance, relate to valid state interests of jurisdiction which are not appropriately addressed in a federal regulation. Similarly, certain additional terms relate to the mechanics of regulating limited offering exemptions at the state level which cannot be included effectively in a federal rule.

The Commission commends NASAA and the members of the NASAA Subcommittee for their cooperation and effort in the development of regulation D and anticipates continued coordination to achieve a uniform system of federal-state limited offering exemptions that facilitates capital formation consistent with the protection of investors.

[10] An official policy guideline of NASAA represents endorsement of a principle which NASAA believes has general application. NASAA has no power to enact legislation, promulgate regulations, or otherwise bind the legislatures or administrative agencies of its members.

III. Synopsis

The following section-by-section discussion of the provisions of regulation D, the significant commentary on the proposals, and the revisions made to the proposed regulation is included to assist in understanding the regulation as adopted. Attention is directed to the text of regulation D for a more complete understanding. Attention is also directed to the chart following the synopsis which compares the provisions of regulation D exemptions to those of predecessor exemptions.

A. Preliminary Notes

Regulation D contains six preliminary notes. The first preliminary note reminds issuers that regulation D offerings, although exempt from Section 5 of the Securities Act, are not exempt from antifraud or civil liability provisions of the federal securities laws. The note also reminds issuers conducting regulation D offerings of their obligation to furnish whatever material information may be needed to make the required disclosure not misleading.

Note 2 underscores an issuer's obligation to comply with applicable state law and highlights certain areas of anticipated differences between regulation D at the federal and state levels. (*See* section II.B. of this release for further discussion of these differences.)

Note 3 makes clear that reliance on any particular exemption in regulation D does not act as an election. An issuer may always claim the availability of any other applicable exemption. Several commentators believed this note should address specifically the availability of an exemption under section 4(2) of the Securities Act. The Commission has reworded the note by including language that appeared in proposed rule 506(a) and clarified the specific availability of section 4(2).

The fourth note specifies that regulation D is available only to the issuer of the securities and not to its affiliates or others for resales of the issuer's securities. The note further provides that regulation D exemptions are only transactional. Several commentators pointed out that the proposed note in some respects duplicated rule 502(d), the provision governing resale limitations. That redundancy has been eliminated.

Preliminary Note 5, which confirms the availability of regulation D for business combinations, clarifies a question raised by commentators.

The sixth note provides that the regulation is not available for use in a plan or scheme to evade the registration requirements of the Securities Act.

B. Rule 501—Definitions and Terms Used in Regulation D

Rule 501 sets forth, alphabetically, definitions that apply to the entire regulation. The definitions generally represent distillations of concepts in rules 146, 240, and 242. The definition of "accredited investor," however, is an expansion of the term "accredited person" in rule 242.

The Commission has deleted two definitions, "predecessor" and "securities of the issuer," that appeared in the proposed regulation. The effect of these definitions was principally to expand the measurement of proceeds which would be included in the aggregate offering price of an offering under rules 504 and 505. The expansion would have required an issuer to add to the aggregate offering price of its regulation D offering the proceeds of certain offerings by predecessors and affiliates. As commentators observed, this would thus have included, by virtue of the "predecessor" definition, sales of securities by a substantially larger issuer from which the regulation D issuer had acquired the major portion of its assets. Further, by virtue of the "affiliate" definition, sales by limited partnerships with the same general partners as the Regulation D issuer would have been aggregated. Although there may be instances where such results would be appropriate, the Commission has determined to address those cases through general principles of integration, rather than through specific but overly inclusive rules in the regulation. Predecessor and affiliate relationships would be relevant to any consideration of whether prior offerings should be integrated with a proposed offering under regulation D.

1. *Accredited investor.* In proposing the definition of accredited investor,[11] the Commission specifically requested comments regarding three of the seven categories included in the definition. Although commentators generally supported the concept, many suggested changes to particular aspects of the definition.

The introductory language to the proposed definition provided that investors were accredited only if "the

[11] The Commission has adopted a uniform definition applicable to section 4(6) and regulation D. In this regard, the definition in rule 501(a) is identical to the combined provisions of section 2(15) and rule 215 thereunder. The definition of accredited investor contained in section 2(15) of the Securities Act and rule 215 has been reprinted in Regulation D for ease of reference.

issuer and any person acting on the issuer's behalf with respect to such investors have reasonable grounds to believe and do believe, after reasonable inquiry" that the investors came within one of the categories in the definition. It was pointed out that this formulation appeared to bar from the definition someone who actually was accredited but in whom the issuer did not have the requisite belief. The regulation as adopted permits accreditation for investors who are qualified in fact.

The following subsections review the eight categories of accredited investors in rule 501(a).

a. Rule 501(a)(1)—Institutional Investors. Rule 501(a)(1) repeats the listing of institutional investors included in section 2(15)(i) of the Securities Act. One such investor is an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 ("ERISA") (codified in scattered sections of 26, 29 U.S.C.), the investment decisions for which are made by a bank, insurance company, or registered investment adviser. The Commission recognizes, and several commentators noted, that many plans have internalized the function of the plan fiduciary and thus could not qualify under the proposed category. For this reason the Commission believes it is appropriate to extend accredited investor status to any ERISA plan with total assets in excess of $5,000,000.

b. Rule 501(a)(2)—Private Business Development Companies. This category applies to private business development companies as defined in section 202(a)(22) of the Investment Advisers Act of 1940 (the "Advisers Act") (15 U.S.C. 80b–1 *et seq.*). As proposed, the category referred to sections 55(a)(1) through (3) and 2(a)(47) of the Investment Company Act. The proposal was intended to include business development companies that had not made an election under section 2(a)(48)(C) of the Investment Company Act. Several commentators noted, however, that the intent of the category could be more accurately accomplished by referring to the definition of private business development company in section 202(a)(22) of the Advisers Act. Although the new reference expands the class of private business development companies that may be qualified as accredited investors, it still delimits the class by the obligation of its members to provide "significant managerial assistance" as defined in Section 2(a)(47) of the Investment Company Act.[12]

[12] Section 202(a)(22) of the Advisers Act refers to Section 2(a)(48) of the Investment Company Act for the core of its meaning. Section 2(a)(48) defines a business development company as a company that, among other things, "makes available significant managerial assistance," a phrase that is defined in Section 2(a)(47) of the Investment Company Act.

c. Rule 501(a)(3)—Tax Exempt Organizations. Proposed rule 501(a)(3) created a category of accredited investor for college or university endowment funds with assets in excess of $25 million. Upon further consideration and based on commentary the Commission has determined that this category can be expanded to all organizations that are described as exempt organizations in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)). Additionally, the Commission has lowered the asset level to $5 million.

d. Rule 501(a)(4)—Directors, Executive Officers and General Partners. Rule 501(a)(4) provides that certain insiders of the issuer are accredited investors. As proposed, the category pertained only to directors and executive officers. A number of comment letters recommended that the provision be modifed to cover general partners of limited partnerships. The category thus has been revised to include general partners of issuers, as well as directors, executive officers and general partners of those general partners.

e. Rule 501(a)(5)—$150,000 Purchasers. This category represents the combination of a similar category in Rule 242(a)(1)(ii), an analogous provision in rule 146(g)(2)(i)(d), and the recommendations of many commentators. Under this provision a person is an accredited investor upon the purchase of at least $150,000 of the securities if the total purchase price does not exceed 20 percent of the investor's net worth at the time of sale. For natural persons, the joint net worth of the investor and the investor's spouse may be used in measuring the ratio of purchase to net worth. The purchase may be made by one or a combination of four specified methods: cash; marketable securities; an unconditional obligation to pay cash or marketable securities within five years of sale; or a cancellation of indebtedness.

Four significant changes were made to the proposed category: an increase of the purchase amount from $100,000 to $150,000; the addition of a 20 percent of net worth limitation on the total purchase price; the addition of marketable securities as a means of payment; and a modification of the installment provision to allow payments over five years with no specified collateral.

Most commentary focused on the proposed installment provision which required an unconditional obligation to pay within two years of the first issuance of securities secured by a letter of credit.[13] Commentators pointed out that two years was too short a period for the economics of many business ventures, especially the tax shelter transactions that frequently utilize limited offering exemptions, *e.g.*, real estate and oil and gas partnerships. Additionally, some commentators noted that the two year limitation would have put the investor in a weaker bargaining position if the venture did not proceed satisfactorily. Finally, commentators also viewed the requirement that the installment obligation be collateralized with a letter of credit as an administrative and financial burden for an investor.

The basic premise of proposed Rule 501(a)(5) was that a person capable of investing a large amount of capital (i.e. $100,000 or more) in an offering ought to be considered an accredited investor. However, the Commission noted that, where the purchase price was spread over an extended period of time, the present value of the investment may have been reduced to a level where the investor was no longer investing sufficient amounts to merit accredited investor status.

In addressing the concerns of commentators, the Commission revised the rule to permit a payment period of five years with no specified collateral. In view of the extension of the installment period and in order to ensure that the investor in this category is capable of investing a sufficiently large amount of capital to warrant accredited investor status, the Commission also has increased the purchase price to $150,000 and revised the rule to provide that the total purchase price be limited to no more than 20 percent of the investor's net worth. The latter restriction does not, of course, require a commitment of 20 percent of the investor's net worth in the offering.

Lastly, in response to certain comments, the Commission has supplemented the available methods of payment with securities that have a readily available market quotation.

[13] Commentators questioned measuring the installment time period from "the first issuance of the securities." The Commission has changed the point from which the installment period is to be measured to "the sale of the securities to the purchaser." A sale takes place when the purchaser enters into a commitment to pay for the securities. Thus, in the case of a limited partnership, the sale takes place upon the issuer's acceptance of the subscription agreement or similar commitment by the investor.

Various aspects of this category may be demonstrated by the following examples. An investor whose net worth at the time of sale is $750,000 and who purchases $150,000 of the offering in cash on the day of sale is accredited. The same investor maintains that status if his payment is spread out over five years, so long as on the date of purchase he enters into an unconditional obligation to pay within that period. If, however, that investor agrees to purchase $200,000 of securities in installments, $150,000 to be paid on the date of sale and the balance in four years, he will not qualify under this category of accredited investor because his total purchase of $200,000 is more than 20 percent of his $750,000 net worth. A final case involves the investor with a net worth of $900,000 who agrees to purchase $180,000 of securities over six years, the first $150,000 of that purchase coming in the first five years. That investor is accredited because he is purchasing at least $150,000 within a five-year period and because the total purchase of $180,000 does not exceed 20 percent of his net worth.

f. Rule 501(a)(6)—$1,000,000 Net Worth Test. This category extends accredited investor status to any natural person whose net worth at the time of purchase is $1,000,000. Net worth may be either the individual worth of the investor or the joint net worth of the investor and the investor's spouse.[14] The Commission proposed a level of $750,000 for this test. Some commentators, however, recommended excluding certain assets such as principal residences and automobiles from the computation of net worth. For simplicity, the Commission has determined that it is appropriate to increase the level to $1,000,000 without exclusions.

g. Rule 501(a)(7)—$200,000 Income Test. A natural person who has an income in excess of $200,000 in each of the last two years and who reasonably expects an income in excess of $200,000 in the current year is an accredited investor.

As proposed, this category was based on individual adjusted gross income of $100,000 as reported for federal income tax purposes in the most recent tax year. Commentators objected to that formulation for three reasons.

First, reliance on the federal income tax return presented several problems. Foreign investors may not be required to file or to report all income on the United States tax return. Also, individual adjusted gross income may not be a useful figure for an investor who files a joint tax return or who resides in a community property state. Second, in measuring income only in the most recent tax year, the category included investors who had a nonrecurring peak in income for that year. Thirdly, commentators expressed concern about the general concept of adjusted gross income which does not include certain deductions or exempt income and may thus exclude from accredited investor status many sophisticated investors who can reduce their gross income below $100,000 through legitimate tax planning measures.

The category as adopted is intended to address these concerns. The test is no longer keyed to the federal income tax return. Further, the requisite income level must have been sustained over the two most recent years and the investor must reasonably expect continuation of an adequate level in the year of the investment.[15] Also, the term "adjusted gross income" has been changed to "income". Use of the term "income" will permit the inclusion of certain deductions and additional items of income which, as noted above, were excluded in the proposed concept of adjusted gross income. Accordingly, the appropriate income level has been raised to $200,000.

The rule as adopted does not define the term "income". Rather than adopting a definition, the Commission has determined to utilize a flexible approach, thereby avoiding the issues raised by inclusion in the rule of federal tax law concepts. However, the Commission is concerned that the decision not to define "income" may be misconstrued. The determination of what is and is not "income" is important in establishing the type of investor intended to be included in this category of accredited investor. Note that the term "income", and not "revenues", has been selected as the appropriate term. For example, the revenues of a sole proprietorship would not give an accurate picture of the income of a self-employed person without deducting the operating expenses of the proprietorship. On the other hand, an employee's salary could be a useful figure in determining whether the employee meets the requisite income level provided the employee has not incurred significant expenses in connection with earning that salary.

One possible method of computing income is as follows: individual adjusted gross income (assuming that had been reported on a federal tax return) increased by any deduction for long term capital gains under section 1202 of the Internal Revenue Code (the "Code"), any deduction for depletion under section 611 *et seq.* of the Code, any exclusion for interest under section 103 of the Code, and any losses of a partnership allocated to the individual limited partner as reported on Schedule E of Form 1040 (or any successor report).

h. Rule 501(a)(8)—Entities Made Up of Certain Accredited Investors. The proposed definition of accredited investor did not take into account an entity owned entirely by accredited investors. Rule 501(a)(8) of the final regulation extends accredited investor status to entities in which all the equity owners are accredited investors under rule 501(a) (1), (2), (3), (4), (6), or (7).

2. *Affiliate.* The definition of affiliate in rule 501(b) is the same as that contained in rule 405 of regulation C (17 CFR 230.405).

3. *Agggregate offering price.* Rule 501(c) defines the method for calculating the aggregate offering price. With the exception of certain changes to add clarity, the substance of this provision is similar to that in proposed rule 501.

4. *Business combination.* The definition of business combination in rule 501(d) has undergone only technical revision.

5. *Calculation of number of purchasers.* Rule 501(e) sets forth principles that govern the calculation of the number of purchasers in offerings under rules 505 and 506. These principles represent a consolidation of those in rule 146(g)(2)(i) and rule 242(e)(2) with some modifications. Only technical changes were made to the proposal.[16]

6. *Executive officer.* The definition of executive officer in rule 501(f) has been modified to conform with the definition of that term set forth in rule 405 of Regulation C.

7. *Issuer.* The term "issuer", as set forth in rule 501(g), has been revised to conform with the terminology in the Federal Bankruptcy Code (11 U.S.C. 101 *et seq.).*

8. *Purchaser representative.* In response to comments, the definition of purchaser representative in rule 501(h)

[14] Commentators noted that the proposed rule, which limited net worth to that of the individual investor, presented numerous problems for investors in community property states or for investors with assets held in joint name with a spouse. Recognizing these problems, the Commission has modified the net worth test to include joint net worth.

[15] For an investor purchasing securities in June 1982, income in calendar years 1980 and 1981 and reasonably expected income in 1982 would be used in determining accreditation under this category.

[16] The Commission is proposing to exclude non-U.S. citizens or residents from the calculation of number of purchasers. *See* Release No. 33-6360 (November 20, 1981) (46 FR 58511).

has been revised in three respects. First, the introductory language to the paragraph has been reformulated. As adopted, the definition includes any person who satisfies the conditions of the term in fact, as well as any person the issuer reasonably believes falls within the category. A second change incorporated the categories set forth in rule 501(e)(1) (ii) and (iii) into subparagraphs (ii) and (iii). Thirdly, paragraph (2) was revised to permit the purchaser representative to make the requisite evaluation of the prospective investment "with the purchaser."

C. Rule 502—General Conditions To Be Met

Rule 502 sets forth general conditions that relate to all offerings under Rules 504 through 506. These cover guidelines for determining whether separate offers and sales constitute part of the same offering under principles of integration, requirements as to specific disclosure requirements in regulation D offerings, and limitations on the manner of conducting the offering and on the resale of securities acquired in the offering.

As proposed, Rule 502 contained a provision developed in conjunction with the NASAA Subcommittee that prohibited the payment of commissions or similar remuneration to other than registered broker-dealers. The Commission received significant adverse comment on the provision and upon reconsideration has deleted it from the final regulation. As indicated in section II.B. above, the Commission believes, based on variations in state law regarding registration of broker-dealers and other persons receiving transaction related remuneration, that the operation of state registration provision in the federal regulation would create significant complications. Because of valid state jurisdictional concerns, it is likely that NASAA will recommend the addition of a provision similar to proposed rule 502(e) in the uniform state exemptions. This is highlighted in Preliminary Note 2.

1. *Integration.* Rule 502(a) provides that all sales that are part of the same regulation D offering must be integrated.[17] The rule provides a safe harbor for all offers and sales that take place at least six months before the start of or six months after the termination of the regulation D offering, so long as there are no offers and sales, excluding those to employee benefit plans, of the same securities within either of these six-month periods.[18]

Along with several technical revisions, the Commission changed the word "issue" to "offering" throughout the provision. This change makes the language of the rule consistent with the principle of integration.[19]

2. *Information Requirements.* Rule 502(b) provides when and what type of disclosure must be furnished in regulation D offerings. If an issuer sells securities under Rule 504 or only to accredited investors, the regulation D does not mandate any specific disclosure.[20] If securities are sold under rule 505 or 506 to any investors that are not accredited, then rule 502(b)(1)(ii) requires delivery of the information specified in rule 502(b)(2) to all purchasers. The type of information to be furnished varies depending on the size of the offering and the nature of the issuer.

As proposed, rule 502(b)(1)(ii) contained a special rule for disclosure when 60 percent or more of the total offering was purchased by certain institutional accredited investors. Under the 60 percent test, an issuer was not required to furnish disclosure documents unless specifically asked by an investor that was not accredited. The concept of the test was that the accredited investors, negotiating in their own interest, could be relied upon to assure the fairness of the transaction to remaining investors and that for this reason a disclosure document need not be mandated.

The Commission specifically requested comments on the 60 percent test and a number of commentators responded. Opinions varied but a majority of those commenting did not believe the test achieved any practical results. The test put the issuer in the position of having to speculate up until an offering was complete as to whether the 60 percent ratio would be met or as to whether an investor would make a demand for certain disclosure. According to commentators, an issuer faced with that uncertainty would prepare a full disclosure package for use from the beginning of the offering, thus negating any possible savings the rule may have provided. Finally, some commentators questioned whether the presence of institutional accredited investors would reduce the risk or the need for disclosure for other investors. Having considered these comments, the Commission has decided not to adopt the 60 percent test.

The specific disclosure requirements are as follows.

a. Non-reporting companies. Disclosure requirements for companies that are not subject to the reporting obligations of the Exchange Act are set forth in rule 502(b)(2)(i). These requirements are keyed to the size of the offering.

In offerings up to $5,000,000 an issuer must provide the same kind of information as required in Part I of Form S–18, or, for an issuer that is not qualified to use Form S–18, the same kind of information as required in Part I of a registration form available to the issuer.[21] The issuer need only provide two years of financial statements and only the most recent year need be audited. For issuers that are not limited partnerships, only a balance sheet dated within 120 days of the offering must be audited if obtaining an audit of the other financial statements would constitute an unreasonable effort or expense. Limited partnerships may furnish tax basis financial statements if the basic requirements are an unreasonable effort or expense.[22]

For offerings over $5,000,000 issuers must furnish the same kind of information as specified in Part I of an available form of registration. Where the audited financials cannot be obtained without unreasonable effort or expense, the issuer is given options similar to those in offerings up to $5,000,000.

[17] For a general discussion of the concept of integration, *see* Release No. 33–4552 (November 6, 1962) [27 FR 11316].

[18] As proposed, this exclusion applied to employee benefit plans meeting the requirements of rule 16b–3 under the Exchange Act. That reference has been changed to the definition of employee benefit plan in rule 405 of regulation C.

[19] The Commission is proposing to expand the note to rule 502(a) to state that exempt offerings will not be integrated with certain foreign offerings. *See* Release No. 33–6360 (November 20, 1981).

[20] In response to the Commission's request, several commentators addressed the question of whether, in offerings only to accredited investors, issuers should be required to deliver specific disclosure documents to accredited investors who are natural persons. Commentary was divided on the question. The Commission has determined that it is neither necessary nor appropriate to make distinctions of this type within the class of accredited investor.

[21] Currently, Form S–18 is available for an offering up to $5,000,000 but not for an issuer that, among other things, is subject to Exchange Act reporting obligations, is offering limited partnership interests, is an investment company, or is engaging or will engage in oil and gas related operations. The Commission is proposing to delete the limited partnership and oil and gas restrictions. *See* Release No. 33–6388 (March 3, 1982). *See also* Release No. 33–6360 (November 20, 1981) in which the Commission is proposing specific disclosure requirements for non-North American foreign private issuers.

[22] The option of tax basis financials for limited partnerships is an addition in response to comments on the proposed rule that criticized the expense to some limited partnerships of having financial statements prepared in accordance with generally accepted accounting principles.

In the proposed regulation, the Commission set forth another category of offerings, those up to $1,500,000, in which disclosure requirements related to regulation A. Upon review, this category appeared to complicate the structure of tiered disclosure requirements with little significant benefit. Accordingly, that category was combined with offerings from $1,500,000 to $5,000,000.

b. *Reporting companies.* Companies that are subject to Exchange Act reporting obligations must furnish the same kind of disclosure regardless of the size of the offering. These issuers, however, have an option as to the form that this disclosure may take. Under rule 502(b)(2)(ii)(A), a reporting company may provide its most recent annual report to shareholders, assuming it is in accordance with rule 14a–3 or 14c–3 (17 CFR 240.14a–3 or 240.14c–3) under the Exchange Act, the definitive proxy statement filed in connection with that annual report, and, if requested in writing, the most recent Form 10–K (17 CFR 249.310). Alternatively, those issuers may elect under rule 502(b)(2)(ii)(B) to provide the information contained in the most recent of its Form 10–K or a Form S–1 (17 CFR 239.11) registration statement under the Securities Act or a Form 10 (17 CFR 249.10) registration statement under the Exchange Act. Although the requirement under subparagraph (B) refers to specific forms, it does not mandate delivery of the actual reference documents. An issuer, for instance, may choose to prepare and deliver a separate document that contains the necessary information.

Regardless of the issuer's choice of disclosure in subparagraph (A) or (B), rule 502(b)(2)(ii)(C) requires the basic information to be supplemented by information contained in certain Exchange Act reports filed after the distribution or filing of the report or registration statement in question. Further, the issuer must provide certain information regarding the offering and any material changes in the issuer's affairs that are not disclosed in the basic documents.

The disclosure requirements for reporting companies represent a modification of the proposal which would have required an issuer to furnish basic disclosure in the form of its annual report to shareholders along with the information contained in the associated definitive proxy statement. The only exception to the proposal applied to an issuer that did not have an annual report meeting the requirements of rule 14a–3 or 14c–3. That issuer could provide the information contained in its Form 10–K or a registration statement. Commentators believed it was more appropriate to permit issuers the option of preparing a current composite document for the exempt offering. The Commission has reformulated the information requirements for reporting companies to address those concerns.

c. Other information requirements. The balance of rule 502(b)(2) provides for the treatment of exhibits, the right of purchasers that are not accredited to receive information which was furnished to accredited investors, and, in offerings involving nonaccredited investors, the right of all purchasers to ask questions of the issuer concerning the offering, and a specific obligation by the issuer to disclose all material differences in terms or arrangements as between security holders in a business combination or exchange offer. These provisions have undergone some technical revision and have been reformulated to accommodate the deletion of the 60 percent provision in rule 502(b)(1)(ii).

3. *Manner of offering.* Rule 502(c) prohibits the use of general solicitation or general advertising in connection with regulation D offerings, except in certain cases under rule 504. The prohibition follows a similar restriction in rule 146(c), except that both as proposed and as adopted the limitation in regulation D alters those aspects of rule 146(c) that related to qualified offerees.[23]

4. *Limitations on resale.* Securities acquired in a regulation D offering, with the exception of certain offerings under rule 504, have the status of securities acquired in a transaction under section 4(2) of the Securities Act.[24] As further provided in rule 502(d), the issuer shall exercise reasonable care to assure that purchasers of securities are not underwriters, which reasonable care will include certain inquiry as to investment purpose, disclosure of resale limitations and placement of a legend on the certificate. Apart from technical drafting changes, the rule is similar to the proposal.

D. Rule 503—Filings of Notice of Sales

The Commission is adopting a uniform notice of sales form for use in offerings under both regulation D and section 4(6) of the Securities Act. The form is an adaptation of Form 242 and Form 4(6) to the regulation D context.[25] As with the predecessor forms, issuers will furnish information on Form D mainly by checking appropriate boxes. The form requires an indication of the exemptions being claimed.

Rule 503 sets forth the filing requirements for Form D. The notice is due 15 days [26] after the first sale of securities in an offering under regulation D.[27] Subsequent notices are due every six months after first sale and 30 days after the last sale. One copy of each notice must be manually signed by a person duly authorized by the issuer.[28]

Rule503(d) requires an undertaking in Form D to furnish the staff, upon its written request, with the information provided to purchasers that are not accredited in a rule 505 offering. This is similar to the undertaking required by rule 242(h)(2). In the proposed regulation, that undertaking was broader and covered similar requests by state authorities. The Commission has decided, however, not to include the state undertaking in the final regulation. Many states may elect to require such an undertaking and the Commission appreciates the interests that such an undertaking serves. The Commission, nevertheless, was concerned about the effects of including the state feature in the federal rule since this would have raised a question as to the meaning of the undertaking in states that had not adopted regulation D.

E. Rule 504—Exemption for Offers and Sales Not Exceeding $500,000

Rule 504, which replaces rule 240, provides an exemption under section 3(b) of the Securities Act for certain offers and sales not exceeding an aggregate offering price of $500,000. Rule 240 permits sales up to $100,000 to 100 investors. Proceeds from securities sold within the preceding 12 months in all transactions exempt under section

[23] Several commentators were concerned with the proposed wording of rule 502(c)(2), believing that its use of the word "mailing" was an absolute prohibition on mail as a means of inviting persons to seminars. The Commission has revised the language to eliminate that implication.

[24] Rule 144 and rule 148 are being amended to conform their definitions of "restricted securities" with regulation D.

[25] One change which has been made in response to the recommendation of commentators involves the listing of persons receiving commissions or similar remuneration. That requirement has been modified to permit the listing of firm names in certain cases.

[26] Notices under rule 146 are due at the time of first sale; those under rule 242 must be filed 10 days after first sale; and rule 240 notices are required 10 days after the close of the first month in which a sale is made. As proposed, notice under regulation D was due 30 days after first sale.

[27] In response to commentators, the Commission notes that generally the acceptance of subscription funds into an escrow account pending receipt of minimum subscriptions would trigger the filing requirements.

[28] As proposed, the signature was to have been by a duly authorized officer.

3(b) [29] or in violation of section 5(a) of the Securities Act must be included in computing the aggregate offering price under rule 504.[30] The exemption is not available to investment companies or issuers subject to Exchange Act reporting obligations. Commissions or similar transaction related remuneration may be paid.

As under rule 240, the exemption under rule 504 does not mandate specific disclosure requirements. However, the issuer remains subject to the antifraud and civil liability provisions of the Federal securities laws and must also comply with state requirements.

Offers and sales under rule 504 must be made in accordance with all the general terms and conditions in rules 501 through 503. However, if the entire offering is made exclusively in states that require registration and the delivery of a disclosure document, and if the offering is in compliance with those requirements, then the general limitations on the manner of offering and on resale will not apply.

With the exception of its format, which has been reorganized along with that of rules 505 and 506 for purposes of clarity, rule 504 is identical to the proposal. Most commentators supported the exemption. A few opposed the bar to reporting companies while others recommended retaining the exclusions from aggregation in rule 240. In view of the overall support for the exemption, however, and noting the emphasis in this rule on state regulation and the increase in aggregate offering price from rule 240, the Commission has concluded that the exemption's parameters are appropriate.

F. Rule 505—Exemption for Offers and Sales Not Exceeding $5,000,000

Rule 505 replaces rule 242. The rule provides an exemption under section 3(b) of the Securities Act for offers and sales to no more than 35 purchasers that are not accredited where the aggregate offering price over 12 months does not exceed $5,000,000. As with rule 504, the aggregate offering price includes proceeds from offers and sales under section 3(b) or in violation of section 5(a) of the Securities Act.[31] Rule 242 permits up to $2,000,000 in sales, aggregated over six months, to no more than 35 purchasers that are not accredited.[32]

Rule 505 is available to any issuer that is not an investment company. This is an expansion of the availability of rule 242 which follows the eligibility criteria of Form S–18 and is currently not available to non-corporate issuers, to foreign issuers, and to issuers engaged in oil and gas activities. As proposed, rule 505 barred from its use issuers that had been subject to Exchange Act reporting obligations for more than 36 months preceding the offering. Questioning that limitation, commentators observed that issuers that had been reporting for 36 months were not, in the context of a rule 505 offering, necessarily more seasoned or substantial than non-reporting companies. The limitation, thus, did not presumptively work in favor of small businesses. Accordingly, the Commission has not retained any restrictions on the use of rule 505 based on Exchange Act reporting obligations.

Finally, rule 505 is not available to issuers that are subject to any of the disqualification provisions contained in rule 252 (c), (d), (e) or (f) of regulation A. The Commission has deleted proposed state related disabilities based on a false filing with a state, on a felony conviction for fraud or deceit, and on a state administrative cease and desist order for certain state securities violations. As discussed in section II.B. of this release, these disqualifications are of valid concern to states. Their inclusion in the federal exemption, however, presented significant complications based on different degrees of state administrative actions and procedures required for review of waiver requests.

G. Rule 506—Exemption for Offers and Sales Without Regard to Dollar Amount

Rule 506 relates to transactions that are deemed to be exempt under section 4(2) of the Securities Act. It modifies and replaces rule 146. Like its predecessor, rule 506 exempts offers and sales to no more than 35 purchasers. Whereas rule 146 excludes certain purchasers from the count, rule 506 excludes accredited investors in computing the number of purchasers. More significantly, rule 506 modifies the offeree qualification principles of rule 146 in two ways. First, rule 506 requires that only purchasers meet the sophistication standard. Second, the rule eliminates the economic risk test. Commentators endorsed both modifications.

The Commission has redrafted rule 506 so that it parallels the form of rules 504 and 505. In the process, two proposed provisions have been eliminated. One, regarding business combinations in proposed rule 506(b)(2), has been removed on the ground that, in view of other general rules in the regulation, its principle does not require specific recitation. Another, regarding purchaser representatives in proposed rule 506(c), has been eliminated because of overlapping coverage in the definition of purchaser representative in rule 501(h)(4).[33]

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[29] Exemptions under section 3(b) include rule 240, Rule 242, regulation A, and rules 504 and 505 of regulation D. The proposed rule listed all but rules 240 and 242. The final version, by referring generally to section 3(b), is more concise. Further, it covers the transition period where issuers may have offerings under both regulation D and its predecessor exemptions.

[30] Aggregation under rule 240 requires inclusion of all sales made without registration but permits exclusion from that calculation of certain non-convertible notes or similar evidences of indebtedness issued to certain institutions and securities sold to promoters, directors, executive officers and full time employees.

[31] Based on its experience with rule 242, the Commission is aware that in computing the aggregate offering price issuers frequently misunderstand the interaction of the concepts of aggregation and integration as applicable under rules 504(b)(2)(i) and 505(b)(2)(i). Aggregation is the principle by which an issuer determines the dollar worth of exempt sales available directly under section 3(b) of the Securities Act. Integration is a principle under which an issuer determines overall characteristics of its offering. The following examples illustrate the application of these concepts. An issuer that has conducted an offering under rule 505 in May 1982 must aggregate the proceeds from that offering with the proceeds of a rule 505 offering conducted in December 1982. If the May offering had been under Rule 506, however, it would not need to be aggregated with the December offering. In either case, the May offering should be exempt from principles of integration by virtue of the safe harbor provision in rule 502(a). If a rule 506 offering had been conducted in July 1982, the integration safe harbor would not be available as to a subsequent rule 505 offering in December. Although the proceeds from the July 506 offering would not be added to the December 505 aggregate offering price under aggregation principles, they would have to be included if the two offerings could be integrated. Assuming the two offerings were integrated, then the issuer would have to evaluate all characteristics of the combined transactions, e.g., number of investors, aggregate offering price, etc., when determining the availability of exemption.

[32] Rule 242 does not aggregate proceeds from securities sold in violation of section 5(a) or under regulation A pursuant to an employee plan defined in rule 16b–3 under the Exchange Act.

[33] Commentators expressed concern that this exemption was not clearly designated as a safe harbor rule under section 4(2) of the Securities Act. Such a connection is important, they noted, for purposes of exemption from Regulation T (12 CFR 220.1–220.8) of the Federal Reserve Board, exemption from the definition of "investment company" under section 3(c)(1) of the Investment Company Act, and exemption from registration under certain state laws. The final language of rule 506 responds to this concern. In addition, the Commission's Division of Corporation Finance has conferred with and has been assured by the staff of the Federal Reserve Board that transactions under rule 506 will be exempt from the operation of Regulation T. Finally, the Commission regards rule 506 transactions as non-public offerings for purposes of the definition of "investment company" in section 3(c)(1) of the Investment Company Act and as section 4 transactions for purposes of section 304(b) of the Trust Indenture Act of 1939 (15 U.S.C. 77 aaa *et eq.*, as amended).

Comparative Chart of Securities Act Limited Offering Exemptions

Comparison Item	Rule 240 Rule 504	Rule 242 Rule 505	Rule 146 Rule 506	Section 4(6)
Aggregate Offering Price Limitation	$100,000 $500,000	$2,000,000 (6 mos.) $5,000,000 (12 mos.)	Unlimited Unlimited	$5,000,000
Number of Investors	100 (total shareholders) Unlimited	35 plus unlimited accredited	35 plus those purchasing in excess of $150,000	Unlimited accredited only
		35 plus unlimited accredited		
Investor Qualification	None required None required	Accredited or none required Accredited or none required	Offeree and purchaser must be sophisticated or wealthy (with representative) Purchaser must be sophisticated (alone or with representative) Accredited presumed to be qualified	Accredited
Commissions	Prohibited Permitted	Permitted Permitted		Permitted
Limitations on Manner of Offering	No general solicitation permitted No general solicitation unless registered in states that require delivery of a disclosure document.	No general solicitation permitted No general solicitation permitted		No general solicitation permitted
Limitations on Resale	Restricted Restricted unless registered in states that require delivery of a disclosure document	Restricted Restricted		Restricted
Issuer Qualifications	No companies having more than 100 shareholders at completion of offering No reporting or investment companies	No non-North American issuers, investment companies, oil and gas companies, or issuers disqualified under Regulation A No investment companies or issuers disqualified under Regulation A	None None	None
Notice of Sales	Form 240 required as a condition of rule except for first $100,000 under rule- 3 copies filed in Regional Office within 10 days after end of month in which sale made	Form 242 required as a condition of rule- 5 copies filed with Commission 10 days after first sale, every six months after first sale, 10 days after completion	Form 146 required as condition of rule- 3 copies filed in Regional Office at time of first sale, except for offerings below $50,000 in 12 months	Form 4(6) required as condition of exemption - 5 copies filed with Commission 10 days after first sale, every 6 months after first sale, 10 days after completion
	Form D required as a condition of exemption - 5 copies filed with Commission 15 days after first sale, every 6 months after first sale, 30 days after last sale			

Comparison Item	Rule 240 Rule 504	Rule 242 Rule 505	Rule 146 Rule 506	Section 4(6)
Information Requirements	No information specified No information specified	1. If purchased solely by accredited no information specified 2. If purchased by any non-accredited, must furnish (a)(non-reporting companies)information in Part I of Form S-18 with 1 year audited financials (b)(reporting companies)most recent annual report, def. proxy statement and recent periodic reports	Must furnish (unless offeree has access via economic bargaining power) 1. Below $1,500,000 - information may be limited to Part II, Form 1-A of Reg A 2. Other offerings (a)(non reporting) information in registration available to issuer - Unaudited financials if audit requirements unreasonable effort or expense (b)(reporting companies)recent Form S-1 or Form 10, def. proxy statement and periodic reports	No information specified No information specified

1. If purchased solely by accredited, no information specified
2. If purchased by non-accredited,
   a. non-reporting companies must furnish
   i. offerings up to $5,000,000-information in Part I of Form S-18 or available registration, 2 yr. financials, 1 year audited-if undue effort or expense, issuers other than limited partnerships only balance sheet as of 120 days before offering must be audited-if limited partnership and undue effort or expense, financials may be tax basis
   ii. offerings over $5,000,000-information in Part I of available registration-if undue effort or expense, issuers other than limited partnerships only balance sheet as of 120 days before offering must be audited-if limited partnership and undue effort or expense, financials may be tax basis
   b. reporting companies must furnish
   i. Rule 14a-3 annual report to shareholders, definitive proxy statement and 10-K, if requested, plus subsequent reports and other updating information or
   ii. information in most recent Form S-1 or Form 10 or Form 10-K plus subsequent reports and other updating information
   c. Issuers must make available prior to sale
   i. exhibits
   ii. written information given to accredited investors
   iii. opportunity to ask questions and receive answers

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IV. Effective Date and Operation of Regulation D

Regulation D, rule 215, Form D, and related amendments to rules 144 and 148 will be effective and Form 4(6) will be rescinded on April 15, 1982. Rules 146, 240, and 242 and Forms 146, 240, and 242 will be rescinded on June 30, 1982. For those offerings made in compliance with the terms of rules 146, 240 and 242 which commence prior to the effective date of regulation D (April 15, 1982) and which continue past June 30, 1982, the Commission takes the administrative position that no registration is required under the Securities Act.

The staff will issue interpretive letters to assist persons in complying with regulation D, but the staff will not issue no-action letters as to whether a transaction satisfies the requirements of the regulation. With respect to resales of securities, the staff will continue its present policy of not expressing an opinion on inquiries regarding the following: (1) Hypothetical situations; (2) The removal of restrictive legends from securities; (3) Whether a person is an affiliate; or (4) Requests for no-action positions regarding securities acquired on or after April 15, 1972, as set forth in Release No. 33–6099 (August 2, 1979) (44 FR 46752).

V. Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis regarding regulation D, Form D and rule 215 in accordance with 5 U.S.C. 604.

A copy of this analysis may be obtained by contacting David B. H. Martin, Jr., Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202) 272–2573.

Text of Rules

17 CFR Chapter II is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By revising paragraph (a)(3) of § 230.144 as follows:

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

* * * * *

(a) * * *

(3) The term "restricted securities" means securities that are acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving any public offering, or securities acquired from the issuer that are subject to the resale limitations of regulation D under the Act, or securities that are subject to the resale limitations of regulation D and are acquired in a transaction or chain of transactions not involving any public offering.

* * * * *

§ 230.146 [Removed]

2. By removing § 230.146.

3. By revising paragraph (a)(5) of § 230.148 as follows:

§ 230.148 Persons deemed not to be underwriters of securities issued or sold in connection with bankruptcy proceedings.

* * * * *

(a) * * *

(5) The term "restricted securities" means securities that are acquired directly or indirectly from the issuer, or from an affiliate of the issuer in a transaction or chain of transactions not involving any public offering, or securities acquired from the issuer that are subject to the resale limitations of regulation D under the Securities Act of 1933, or securities that are subject to the resale limitations of regulation D and are acquired in a transaction or chain of transactions not involving any public offering.

* * * * *

4. By adding a new § 230.215 to read as follows:

§ 230.215 Accredited investor.

The term "accredited investor" as used in section 2(15)(ii) of the Securities Act of 1933 (15 U.S.C. 77b(15)(ii)) shall include the following persons:

(a) Any employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 with total assets in excess of $5,000,000;

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

(c) Any organization described in section 501(c)(3) of the Internal Revenue Code with total assets in excess of $5,000,000;

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

(e) Any person who purchases at least $150,000 of the securities being offered, where the purchaser's total purchase price does not exceed 20 percent of the purchaser's net worth at the time of sale, or joint net worth with that person's spouse, for one or any combination of the following: (1) cash, (2) securities for which market quotations are readily

available, (3) an unconditional obligation to pay cash or securities for which market quotations are readily available which obligation is to be discharged within five years of the sale of the securities to the purchaser, or (4) the cancellation of any indebtedness owed by the issuer to the purchaser;

(f) Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds $1,000,000;

(g) Any natural person who had an individual income in excess of $200,000 in each of the two most recent years and who reasonably expects an income in excess of $200,000 in the current year; and

(h) Any entity in which all of the equity owners are accredited investors under paragraph (a), (b), (c), (d), (f) or (g) of this § 230.215.

§ 230.240 [Removed]

5. By removing § 230.240.

§ 230.242 [Removed]

6. By removing § 230.242.

7. By adding a new regulation D, §§ 230.501 through 230.506, to read as follows:

Regulation D—Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933

Preliminary Notes

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

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

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

4. These rules are available only to the issuer of the securities and not to any affiliate of that issuer or to any other person for resales of the issuer's securities. The rules provide an exemption only for the transactions in which the securities are offered or sold by the issuer, not for the securities themselves.

5. These rules may be used for business combinations that involve sales by virtue of rule 145(a) (17 CFR 230.145(a)) or otherwise.

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

§ 230.501 Definitions and terms used in Regulation D.

As used in regulation D, the following terms shall have the meaning indicated:

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

(1) Any bank as defined in section 3(a)(2) of the Act whether acting in its individual or fiduciary capacity; insurance company as defined in section 2(13) of the Act; investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; Small Business Investment Company licensed by the U.S. Small Business Administration under section 301 (c) or (d) of the Small Business Investment Act of 1958; employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is either a bank, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of $5,000,000;

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

(3) Any organization described in Section 501(c)(3) of the Internal Revenue Code with total assets in excess of $5,000,000;

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

partner of a general partner of that issuer;

(5) Any person who purchases at least $150,000 of the securities being offered, where the purchaser's total purchase price does not exceed 20 percent of the purchaser's net worth at the time of sale, or joint net worth with that person's spouse, for one or any combination of the following: (i) cash, (ii) securities for which market quotations are readily available, (iii) an unconditional obligation to pay cash or securities for which market quotations are readily available which obligation is to be discharged within five years of the sale of the securities to the purchaser, or (iv) the cancellation of any indebtedness owed by the issuer to the purchaser;

(6) Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds $1,000,000;

(7) Any natural person who had an individual income in excess of $200,000 in each of the two most recent years and who reasonably expects an income in excess of $200,000 in the current year; and

(8) Any entity in which all of the equity owners are accredited investors under paragraphs (a) (1), (2), (3), (4), (6), or (7) of this section.

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

(c) *Aggregate offering price.* "Aggregate offering price" shall mean the sum of all cash, services, property, notes, cancellation of debt, or other consideration received by an issuer for issuance of its securities. Where securities are being offered for both cash and non-cash consideration, the aggregate offering price shall be based on the price at which the securities are offered for cash. 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.

(d) *Business combination.* "Business combination" shall mean any transaction of the type specified in paragraph (a) of rule 145 under the Act (17 CFR 230.145) and any transaction involving the acquisition by one issuer, in exchange for all or a part of its own or its parent's stock, of stock of another issuer if, immediately after the acquisition, the acquiring issuer has control of the other issuer (whether or not it had control before the acquisition).

(e) *Calculation of number of purchasers.* For purposes of calculating the number of purchasers under §§ 230.505(b) and 230.506(b) only, the following shall apply:

(1) The following purchasers shall be excluded:

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

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

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

(iv) Any accredited investor.

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

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

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

(g) *Issuer.* The definition of the term "issuer" in section 2(4) of the Act shall apply, except that in the case of a

proceeding under the Federal Bankruptcy Code (11 U.S.C. 101 *et seq.*), the trustee or debtor in possession shall be considered the issuer in an offering under a plan or reorganization, if the securities are to be issued under the plan.

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

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

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

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

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

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

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

(4) Discloses to the purchaser in writing prior to the acknowledgment specified in paragraph (h)(3) of this section any material relationship between himself or his affiliates and the issuer or its affiliates that then exists, that is mutually understood to be contemplated, or that has existed at any time during the previous two years, and any compensation received or to be received as a result of such relationship.

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

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

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

§ 230.502 General conditions to be met.

The following conditions shall be applicable to offers and sales made under regulation D:

(a) *Integration.* All sales that are part of the same regulation D offering must meet all of the terms and conditions of regulation D. Offers and sales that are made more than six months before the start of a regulation D offering or are made more than six months after completion of a regulation D offering will not be considered part of that regulation D offering, so long as during those six month periods there are no offers or sales of securities by or for the issuer that are of the same or a similar class as those offered or sold under regulation D, other than those offers or sales of securities under an employee benefit plan as defined in rule 405 under the Act (17 CFR 230.405).

Note.—The term "offering" is not defined in the Act or in Regulation D. If the issuer offers or sells securities for which the safe harbor rule in paragraph (a) of this section is unavailable, the determination as to whether separate sales of securities are part of the same offering (*i.e.* are considered "integrated") depends on the particular facts and circumstances.

The following factors should be considered in determining whether offers and sales should be integrated for purposes of the exemptions under Regulation D:

(a) Whether the sales are part of a single plan of financing;

(b) Whether the sales involve issuance of the same class of securities;

(c) Whether the sales have been made at or about the same time;

(d) Whether the same type of consideration is received; and

(e) Whether the sales are made for the same general purpose. *See* Release No. 33-4552 (Novmber 6, 1962) (27 FR 11316).

(b) *Information requirements.*—(1) *When information must be furnished.*

(i) If the issuer sells securities either under § 230.504 or only to accredited investors, paragraph (b) of this § 230.502 does not require that specific information be furnished to purchasers.

(ii) If the issuer sells securities under § 230.505 or 230.506 to any purchaser that is not an accredited investor, the issuer shall furnish the information specified in paragraph (b)(2) of this section to all purchasers during the course of the offering and prior to sale.

(2) *Type of information to be furnished.* (i) If the issuer is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, the issuer shall furnish the following information, to the extent material to an understanding of the issuer, its business, and the securities being offered:

(A) *Offerings up to $5,000,000.* The same kind of information as would be required in Part I of Form S-18 (17 CFR 239.28), except that only the financial statements for the issuer's most recent fiscal year must be certified by an independent public or certified accountant. If Form S-18 is not available to an issuer, then the issuer shall furnish the same kind of information as would be required in Part I of a registration statement filed under the Act on the form that the issuer would be entitled to use, except that only the financial statements for the most recent two fiscal years prepared in accordance with generally accepted accounting principles shall be furnished and only the financial statements for the issuer's most recent fiscal year shall be certified by an independent public or certified accountant. If an issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited. If the issuer is a limited partnership and cannot obtain the required financial statements without unreasonable effort or expense, it may furnish financial statements that have been prepared on the basis of federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant.

(B) *Offerings over $5,000,000.* The same kind of information as would be required in Part I of a registration statement filed under the Act on the form that the issuer would be entitled to use. If an issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the issuer's balance sheet, which shall be dated within 120 days of the

start of the offering, must be audited. If the issuer is a limited partnership and cannot obtain the required financial statements without unreasonable effort or expense, it may furnish financial statements that have been prepared on the basis of federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant.

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

(A) The issuer's annual report to shareholders for the most recent fiscal year, if such annual report meets the requirements of § 240.14a–3 or 240.14c–3 under the Exchange Act, the definitive proxy statement filed in connection with that annual report, and, if requested by the purchaser in writing, a copy of the issuer's most recent Form 10–K (17 CFR 249.310) under the Exchange Act.

(B) The information contained in an annual report on Form 10–K under the Exchange Act or in a registration statement on Form S–1 (17 CFR 239.11) under the Act or on Form 10 (17 CFR 249.210) under the Exchange Act, whichever filing is the most recent required to be filed.

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

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

(iv) At a reasonable time prior to the purchase of securities by any purchaser that is not an accredited investor in a transaction under § 230.505 or 230.506, the issuer shall furnish the purchaser a brief description in writing of any written information concerning the offering that has been provided by the issuer to any accredited investor. The issuer shall furnish any portion or all of this information to the purchaser, upon his written request, prior to his purchase.

(v) The issuer shall also make available to each purchaser at a reasonable time prior to his purchase of securities in a transaction under § 230.505 or 230.506 the opportunity to ask questions and receive answers concerning the terms and conditions of the offering and to obtain any additional information which the issuer possesses or can acquire without unreasonable effort or expense that is necessary to verify the accuracy of information furnished under paragraph (b)(2) (i) or (ii) of this section.

(vi) For business combinations, in addition to information required by paragraph (b)(2) of this section, the issuer shall provide to each purchaser at the time the plan is submitted to security holders, or, with an exchange, during the course of the transaction and prior to sale, written information about any terms or arrangements of the proposed transaction that are materially different from those for all other security holders.

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

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

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

(d) *Limitations on resale.* Except as provided in § 230.504(b)(1), securities acquired in a transaction under regulation D shall have the status of securities acquired in a transaction under section 4(2) of the Act and cannot be resold without registration under the Act or an exemption therefrom. The issuer shall exercise reasonable care to assure that the purchasers of the securities are not underwriters within the meaning of section 2(11) of the Act, which reasonable care shall include, but not be limited to, the following:

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

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

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

§ 230.503 Filing of notice of sales.

(a) The issuer shall file with the Commission five copies of a notice on Form D (17 CFR 239.500) at the following times:

(1) No later than 15 days after the first sale of securities in an offering under regulation D;

(2) Every six months after the first sale of securities in an offering under regulation D, unless the final notice required by paragraph (a)(3) of this Section has been filed; and

(3) No later than 30 days after the last sale of securities in an offering under regulation D.

(b) If the offering is completed within the 15 day period described in paragraph (a)(1) of this Section and if the notice is filed no later than the end of that period but after the completion of the offering, then only one notice need be filed to comply with paragraphs (a)(1) and (3) of this Section.

(c) One copy of every notice on Form D shall be manually signed by a person duly authorized by the issuer.

(d) If sales are made under § 230.505, the notice shall contain an undertaking by the issuer to furnish to the Commission, upon the written request of its staff, the information furnished by the issuer under § 230.502(b)(2) to any purchaser that is not an accredited investor.

(e) If more than one notice for an offering is required to be filed under paragraph (a) of this Section, notices after the first notice 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 of the first notice.

(f) 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, D.C.; 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 Office of Small Business Policy, Division of Corporation Finance, at the Commission's principal office in Washington, D.C., if the notice is delivered to such office after the date on which it is required to be filed.

§ 230.504 Exemption for limited offers and sales of securities not exceeding $500,000.

(a) *Exemption.* Offers and sales of securities that satisfy the conditions in paragraph (b) of this Section by an issuer that is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act and 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 through 230.503, except that the provisions of §§ 230.502 (c) and (d) shall not apply to offers and sales of securities under this Section that are made exclusively in one or more states each of which provides for the registration of the securities and requires the delivery of a disclosure document before sale and that are made in accordance with those state provisions.

(2) *Specific condition.*—(i) *Limitation on aggregate offering price.* The aggregate offering price for an offering of securities under this § 230.504, as defined in § 230.501(c), shall not exceed $500,000, 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 1.—The calculation of the aggregate offering price is illustrated as follows:

Example 1. If an issuer sold $200,000 of its securities on June 1, 1982 under this § 230.504 and an additional $100,000 on September 1, 1982, the issuer would be permitted to sell only $200,000 more under this § 230.504 until June 1, 1983. Until that date the issuer must count both prior sales toward the $500,000 limit. However, if the issuer made its third sale on June 1, 1983, the issuer could then sell $400,000 of its securities because the June 1, 1982 sale would not be within the preceding twelve months.

Example 2. If an issuer sold $100,000 of its securities on June 1, 1982 under this § 230.504 and an additional $4,500,000 on December 1, 1982 under § 230.505, the issuer could not sell any of its securities under this § 230.504 until December 1, 1983. Until then the issuer must count the December 1, 1982 sale towards the limit of $500,000 within the preceding twelve months.

Note 2.—If a transaction under this section fails to meet the limitation on the aggregate offering price, it does not affect the availability of this Section for the other transactions considered in applying such limitation. For example, if the issuer in *Example 1* made its third sale on May 31, 1983, in the amount of $250,000, this § 230.504 would not be available for that sale, but the exemption for the prior two sales would be unaffected.

§ 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 through 230.503.

(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.* The issuer shall reasonably believe 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.

(iii) *Disqualifications.* No exemption under this § 230.505 shall be available for the securities of any issuer described in § 230.252(c), (d), (e), or (f) of regulation A, except that for purposes of this section only:

(A) The term "filing of the notification required by § 230.255" as used in § 230.252(c), (d), (e) and (f) shall mean the first sale of securities under this section;

(B) The term "underwriter" as used in § 230.252(d) and (e) 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 § 230.505; 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.

§ 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 exemption under this section, offers and sales must satisfy all the terms and conditions of §§ 230.501 through 230.503.

(2) *Specific conditions.*—(i) *Limitation on number of purchasers.* The issuer shall reasonably believe 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.* The issuer shall reasonably believe immediately prior to making any sale that each purchaser who is not an accredited investor either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

§ 239.146 [Removed]

8. By removing § 239.146.

§ 239.240 [Removed]

9. By removing § 239.240.

§ 239.242 [Removed]

10. By removing § 239.242.

§ 239.246 [Removed]

11. By removing § 239.246.

12. By adding a new § 239.500 to read as follows:

§ 239.500 Form D, notice of sales of securities under Regulation D and section 4(6) of the Securities Act of 1933.

(a) Five copies of a notice on this form shall be filed with the Commission at the following times:

(1) No later than 15 days after the first sale of securities in an offering under Regulation D (§§ 230.501–230.506 of this chapter) or under section 4(6) of the Securities Act of 1933;

(2) Every six months after the first sale of securities in an offering under Regulation D or under section 4(6), unless the final notice required by paragraph (a)(3) of this section has been filed; and

(3) No later than 30 days after the last sale of securities in an offering under Regulation D or under section 4(6).

(b) If the offering is completed within the 15 day period described in paragraph (a)(1) of this section and if the notice is filed no later than the end of that period but after the completion of the offering, then only one notice need be filed to comply with paragraphs (a)(1) and (3) of this section.

(c) One copy of every notice on Form D shall be manually signed by a person duly authorized by the issuer.

(d) If more than one notice for an offering is required to be filed under paragraph (a) of this section, notices after the first notice 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 of the first notice.

(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, D.C.; 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 Office of Small Business Policy, Division of Corporation Finance, at the Commission's principal office in Washington, D.C., if the notice is delivered to such office after the date on which it is required to be filed.

Statutory Authority

The foregoing amendments are adopted under section 19(a) and 19(c) of the Securities Act of 1933 (15 U.S.C. 77s(a) and 77s(c)). Additionally, the Commission adopts Rule 215 (17 CFR 230.215) under section 2(15), Rules 504 and 505 (17 CFR 230.504 and 230.505) under section 3(b), amendments to Rules 144 and 148 (17 CFR 230.144 and 230.148) under section 4(1), Rule 506 (17 CFR 230.506) under section 4(2), Form D (17 CFR 239.500) under section 4(6) of the Securities Act of 1933 (15 U.S.C. 77b(15), 77c(b), 77d(1), 77d(2), 77d(6)).

(Secs. 2(15), 3(b), 4(1), 4(2), 4(6), 19(a), 19(c), 48 Stat. 74, 75, 77, 85; sec. 209, 48 Stat. 908; c.122, 59 Stat. 167; sec. 12, 78 Stat. 580; 84 Stat. 1480; sec. 308(a)(2), 90 Stat. 57; sec. 18, 92 Stat. 275; sec. 2, 92 Stat. 962; secs. 505, 622, 701, 94 Stat. 2291, 2292, 2294 15 U.S.C. 77b(15), 77c(b), 77d(1), 77d(2), 77d(6), 77s(a), 77s(c))

By the Commission.

George A. Fitzsimmons,

Secretary.

March 8, 1982.

[FR Doc. 82-6921 Filed 3-15-82; 8:45 am]

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17 CFR Part 240

[Release No. 34-18556, File No. S7—914]

Inspection of Newly Registered Brokers and Dealers by Self-Regulatory Organizations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a rule that authorizes and directs self-regulatory organizations to conduct an inspection of every new broker-dealer member within six months of the firm's registration with the Commission. The purposes of this rule are to avoid duplicative Commission and self-regulatory organization inspections of broker-dealers and to use the Commission's resources more efficiently.

EFFECTIVE DATE: April 26, 1982.

FOR FURTHER INFORMATION CONTACT: Robert A. Love, Esq., Division of Market Regulation (202–272–2781).

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced that it is authorizing and directing self-regulatory organizations ("SROs") with examination responsibility under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the "Act") with respect to newly registered broker and dealer members to conduct the inspections required under section 15 (b)(2)(C) (15 U.S.C. 78o(b)(2)(C)) of the Act. In a November 1981 release [1] the Commission announced the proposal, adopted today, which requires SROs to conduct a financial and operational inspection of a broker or dealer member within six months of the date of such member's registration with the Commission. It also allows SROs to delay, for a period not to exceed six months, inspections for compliance with other applicable provisions of the Act and rules thereunder. In response to comments received, the rule as adopted today differs in one minor respect from the proposal, insofar as SROs are not expressly required pursuant to rule 15b2–2 to inspect members for compliance with SRO rules.

Discussion

Congress added section 15(b)(2)(C) to the Act as part of the Securities Acts Amendments of 1975 [Pub. L. 94–29] primarily because of its concern over the financial and operational difficulties which new broker-dealer firms may encounter in their early months of operation. The section generally requires that brokers and dealers be inspected by the Commission for compliance with the Act and rules within six months of registration with the Commission. It also authorizes the Commission to delay the inspection of any class of broker or dealer for up to six months, and further provides that, upon the Commissions's "authorization and direction," an appropriate SRO shall conduct these first year inspections.

Although the Commission has not previously authorized and directed ("assigned") SROs to conduct inspections under section 15(b)(2)(C), SROs generally have included within their member firm inspection programs early inspections of newly registered brokers and dealers. Such inspections appear to be substantially consistent with the kind of inspection contemplated by Congress when it enacted section 15(b)(2)(C). In addition, pursuant to the requirements of that section, the Commission's regional offices also have conducted an examination program with respect to newly registered brokers and dealers.

It is the Commission's view that assigning to SROs responsibility for inspections under section 15(b)(2)(C) is consistent with the Act's scheme of self-regulation,[2] and permits more efficient use of the Commission's resources. The Commission also believes that this assignment imposes minimal, if any, additional burdens upon the SROs.

The concerns that gave rise to enactment of section 15(b)(2)(C) centered upon the potentially large losses which could result from the operations of an inexperienced broker or dealer.[3] Accordingly, and as

[1] Securities Exchange Act Release No. 18248 (November 10, 1981), 46 FR 56426 (November 16, 1981).

[2] *See generally* section 19 of the Act (15 U.S.C. 78s).

[3] *See* Study of the Securities Industry: Hearings Before the Subcomm. on Commerce & Finance of the

Continued