

§ 230.259

17 CFR Ch. II (4-1-01 Edition)

document or broadcast script under § 230.254, to file any sales material as required by § 230.256 or report as required by § 230.257;

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

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

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

(5) Any person specified in paragraph (a) of § 230.262 has been indicted for any crime or offense of the character specified in paragraph (a)(3) of 230.262, or any proceeding has been initiated for the purpose of enjoining any such person from engaging in or continuing any conduct or practice of the character specified in paragraph (a)(4) of § 230.262;

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

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

(b) Upon the entry of an order under paragraph (a) of this section, the Commission will promptly give notice to the issuer, any underwriter and any selling security holder:

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

(2) That the Commission, upon receipt of a written request within 30 calendar days after the entry of the order, will within 20 calendar days after re-

ceiving the request, order a hearing at a place to be designated by the Commission.

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

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

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

§ 230.259 Withdrawal or abandonment of offering statements.

(a) If none of the securities which are the subject of an offering statement have been sold and such offering statement is not the subject of a proceeding under § 230.258, the offering statement may be withdrawn with the Commission's consent. The application for withdrawal shall state the reason the offering statement is to be withdrawn, shall be signed by an authorized representative of the issuer and shall be provided to the main office of the Commission in Washington, DC.

(b) When an offering statement has been on file with the Commission for nine months without amendment and has not become qualified, the Commission may, in its discretion, proceed in the following manner to determine whether such offering statement has been abandoned by the issuer. If the offering statement has been amended, the 9-month period shall be computed from the date of the latest amendment.

(1) Notice will be sent to the issuer, and to any counsel for the issuer named in the offering statement, by registered or certified mail, return receipt requested, addressed to the most recent addresses for the issuer and issuer's counsel as reflected in the offering statement. Such notice will inform the issuer and issuer's counsel that the offering statement or amendments thereto is out of date and must be either amended to comply with applicable requirements of Regulation A or be withdrawn within 30 calendar days after the notice.

(2) If the issuer or issuer's counsel fail to respond to such notice by filing a substantive amendment or withdrawing the offering statement or does not furnish a satisfactory explanation as to why the issuer has not done so within 30 calendar days, the Commission may declare the offering statement abandoned.

[57 FR 36468, Aug. 13, 1992, as amended at 61 FR 67202, Dec. 20, 1996]

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

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

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

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

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

(b) A transaction made in reliance upon Regulation A shall comply with all applicable terms, conditions and requirements of the regulation. Where an exemption is established only through reliance upon paragraph (a) of this sec-

tion, the failure to comply shall nonetheless be actionable by the Commission under section 20 of the Act.

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

§ 230.261 Definitions.

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

(a) *Final Offering Circular*—The current offering circular contained in a qualified offering statement;

(b) *Preliminary Offering Circular*—The offering circular described in § 230.255(a).

§ 230.262 Disqualification provisions.

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

(a) The issuer, any of its predecessors or any affiliated issuer:

(1) Has filed a registration statement which is the subject of any pending proceeding or examination under section 8 of the Act, or has been the subject of any refusal order or stop order thereunder within 5 years prior to the filing of the offering statement required by § 230.252;

(2) Is subject to any pending proceeding under § 230.258 or any similar section adopted under section 3(b) of the Securities Act, or to an order entered thereunder within 5 years prior to the filing of such offering statement;

(3) Has been convicted within 5 years prior to the filing of such offering statement of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission;

(4) Is subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily