

(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 Such notice will inform the issuer and issuer's counsel that the offering statement or amendments thereto is out of date and must be either amended to comply with applicable requirements of Regulation A or be withdrawn within 30 calendar days after the notice.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