

§ 230.505

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

violation of section 5(a) of the Securities Act.

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

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

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

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

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

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

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

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

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

Example 1: If an issuer sold \$2,000,000 of its securities on June 1, 1982 under this § 230.505 and an additional \$1,000,000 on September 1, 1982, the issuer would be permitted to sell only \$2,000,000 more under this § 230.505 until June 1, 1983. Until that date the issuer must

count both prior sales towards the \$5,000,000 limit. However, if the issuer made its third sale on June 1, 1983, the issuer could then sell \$4,000,000 of its securities because the June 1, 1982 sale would not be within the preceding twelve months.

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

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

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

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

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

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

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

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

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