

§ 230.215

17 CFR Ch. II (4-1-03 Edition)

the employer is able to represent adequately its interests and those of its employees; or

(ii) In connection with the plan, the employer prior to adopting the plan obtains the advice of a person or entity that (A) is not a financial institution providing any funding vehicle for the plan, and is neither an affiliated person as defined in section 2(a)(3) of the Investment Company Act of 1940 of, nor a person who has a material business relationship with, a financial institution providing a funding vehicle for the plan; and (B) is, by virtue of knowledge and experience in financial and business matters, able to represent adequately the interests of the employer and its employees.

(b) Any interest or participation issued to a participant in either a pension or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954 or an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of such Code, and which covers employees, some or all of whom are employees within the meaning of section 401(c)(1) of such Code, shall be exempt from the provisions of section 5 of the Act.

[46 FR 58291, Dec. 1, 1981]

§ 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 savings and loan association or other institution specified in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; any employee benefit plan within the meaning of Table 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 a savings and loan

association, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

(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, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, 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 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;

(f) Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(g) Any trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in § 230.506(b)(2)(ii); and

(h) Any entity in which all of the equity owners are accredited investors.

[47 FR 11261, Mar. 16, 1982, as amended at 53 FR 7868, Mar. 10, 1988; 54 FR 11372, Mar. 20, 1989]

REGULATION A-R—SPECIAL EXEMPTIONS

§ 230.236 Exemption of shares offered in connection with certain transactions.

Shares of stock or similar security offered to provide funds to be distributed to shareholders of the issuer of such securities in lieu of issuing fractional shares, script certificates or order forms, in connection with a stock dividend, stock split, reverse stock split, conversion, merger or similar

transaction, shall be exempt from registration under the Act if the following conditions are met:

(a) The issuer of such shares is required to file and has filed reports with the Commission pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

(b) The aggregate gross proceeds from the sale of all shares offered in connection with the transaction for the purpose of providing such funds does not exceed \$300,000.

(c) At least ten days prior to the offering of the shares, the issuer shall furnish to the Commission in writing the following information: (1) That it proposes to offer shares in reliance upon the exemption provided by this rule; (2) the estimated number of shares to be so offered; (3) the aggregate market value of such shares as of the latest practicable date; and (4) a brief description of the transaction in connection with which the shares are to be offered.

(Secs. 3, 4, and 19, 48 Stat. 75, 77, 85, as amended; 15 U.S.C. 77c, 77d, 77s; secs. 3(b), 4(l), 19(a), 48 Stat. 75, 77, 85; secs. 209, 48 Stat. 908; 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; sec. 301, 94 Stat. 2291, 2294; secs. 12(a), 12(h), 12(i), 16(a), 23(a), 48 Stat. 892, 896, 901; sec. 203a, 49 Stat. 704; sec. 8, 49 Stat. 1379, secs. 3, 8, 78 Stat. 565-568, 579; sec. 1, 82 Stat. 454; sec. 105(b), 88 Stat. 1503; sec. 18, 89 Stat. 155; 15 U.S.C. 77c(b), 77d(l), 77s(a), 78l(a), 78l(h), 78l(i), 78p(a), 78w(a))

[27 FR 3289, Apr. 6, 1962, as amended at 37 FR 22978, Oct. 27, 1972; 47 FR 29652, July 8, 1982; 61 FR 49959, Sept. 24, 1996]

§ 230.237 Exemption for offers and sales to certain Canadian tax-deferred retirement savings accounts.

(a) *Definitions.* As used in this section:

(1) *Canadian law* means the federal laws of Canada, the laws of any province or territory of Canada, and the rules or regulations of any federal, provincial, or territorial regulatory authority, or any self-regulatory authority, of Canada.

(2) *Canadian Retirement Account* means a trust or other arrangement, including, but not limited to, a "Registered Retirement Savings Plan" or "Registered Retirement Income Fund"

administered under Canadian law, that is managed by the Participant and:

(i) Operated to provide retirement benefits to a Participant; and

(ii) Established in Canada, administered under Canadian law, and qualified for tax-deferred treatment under Canadian law.

(3) *Eligible Security* means a security issued by a Qualified Company that:

(i) Is offered to a Participant, or sold to his or her Canadian Retirement Account, in reliance on this section; and

(ii) May also be purchased by Canadians other than Participants.

(4) *Foreign Government* means the government of any foreign country or of any political subdivision of a foreign country.

(5) *Foreign Issuer* means any issuer that is a Foreign Government, a national of any foreign country or a corporation or other organization incorporated or organized under the laws of any foreign country, except an issuer meeting the following conditions:

(i) More than 50 percent of the outstanding voting securities of the issuer are held of record either directly or through voting trust certificates or depositary receipts by residents of the United States; and

(ii) Any of the following:

(A) The majority of the executive officers or directors are United States citizens or residents;

(B) More than 50 percent of the assets of the issuer are located in the United States; or

(C) The business of the issuer is administered principally in the United States.

(iii) For purposes of this definition, the term *resident*, as applied to security holders, means any person whose address appears on the records of the issuer, the voting trustee, or the depositary as being located in the United States.

(6) *Participant* means a natural person who is a resident of the United States, or is temporarily present in the United States, and who contributes to, or is or will be entitled to receive the income and assets from, a Canadian Retirement Account.

(7) *Qualified Company* means a Foreign Issuer whose securities are qualified for investment on a tax-deferred