

**§ 230.238**

basis by a Canadian Retirement Account under Canadian law.

(8) *United States* means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

(b) *Exemption*. The offer to a Participant, or the sale to his or her Canadian Retirement Account, of Eligible Securities by any person is exempt from Section 5 of the Act (15 U.S.C. 77e) if the person:

(1) Includes in any written offering materials delivered to a Participant, or to his or her Canadian Retirement Account, a prominent statement that the Eligible Security is not registered with the U.S. Securities and Exchange Commission and the Eligible Security is being offered or sold in the United States under an exemption from registration.

(2) Has not asserted that Canadian law, or the jurisdiction of the courts of Canada, does not apply in a proceeding involving an Eligible Security.

[65 FR 37676, June 15, 2000]

**§ 230.238 Exemption for standardized options.**

(a) *Exemption*. Except as expressly provided in paragraphs (b) and (c) of this section, the Act does not apply to any standardized option, as that term is defined by section 240.9b-1(a)(4) of this chapter, that is:

(1) Issued by a clearing agency registered under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1); and

(2) Traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)) or on a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3(a)).

(b) *Limitation*. The exemption provided in paragraph (a) of this section does not apply to the provisions of section 17 of the Act (15 U.S.C. 77q).

(c) *Offers and sales*. Any offer or sale of a standardized option by or on behalf of the issuer of the securities underlying the standardized option, an affiliate of the issuer, or an underwriter, will constitute a contract for sale of, sale of, offer for sale, or offer to sell

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the underlying securities as defined in section 2(a)(3) of the Act (15 U.S.C. 77b(a)(3)).

[68 FR 192, Jan. 2, 2003]

**REGULATION A—CONDITIONAL SMALL ISSUES EXEMPTION**

**AUTHORITY:** Secs. 230.251 to 230.263 issued under 15 U.S.C. 77c, 77s.

**SOURCE:** 57 FR 36468, Aug. 13, 1992, unless otherwise noted.

**§ 230.251 Scope of exemption.**

A public offer or sale of securities that meets the following terms and conditions shall be exempt under section 3(b) from the registration requirements of the Securities Act of 1933 (the "Securities Act"):

(a) *Issuer*. The issuer of the securities:

(1) Is an entity organized under the laws of the United States or Canada, or any State, Province, Territory or possession thereof, or the District of Columbia, with its principal place of business in the United States or Canada;

(2) Is not subject to section 13 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a *et seq.*) immediately before the offering;

(3) Is not a development stage company that either has no specific business plan or purpose, or has indicated that its business plan is to merge with an unidentified company or companies;

(4) Is not an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*);

(5) Is not issuing fractional undivided interests in oil or gas rights as defined in § 230.300, or a similar interest in other mineral rights; and

(6) Is not disqualified because of § 230.262.

(b) *Aggregate Offering Price*. The sum of all cash and other consideration to be received for the securities ("aggregate offering price") shall not exceed \$5,000,000, including no more than \$1,500,000 offered by all selling security holders, less the aggregate offering price for all securities sold within the twelve months before the start of and during the offering of securities in reliance upon Regulation A. No affiliate resales are permitted if the issuer has