

Securities and Exchange Commission

§ 230.610a

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 hereunder.

(b) Upon the entry of an order under paragraph (a) of this section, the Commission will promptly give notice to the persons on whose behalf the notification was filed (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 days after the entry of such order, will, within 20 days after the receipt of such request, set the matter down for hearing at a place to be designated by the Commission. If no hearing is requested and none is ordered by the Commission, the order shall become permanent on the thirtieth 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 an opportunity for such hearing, either vacate the order or enter an order permanently suspending the exemption.

(c) 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.

(d) All notices required by this part shall be given to the person or persons on whose behalf the notification was filed by personal service, registered or certified mail or confirmed telegraphic notice at the addresses of such persons given in the notification.

[23 FR 10484, Dec. 30, 1958, as amended at 29 FR 16982, Dec. 11, 1964]

§ 230.610a Schedule A: Contents of offering circular for small business investment companies; Schedule B: Contents of offering circular for business development companies.

SCHEDULE A—CONTENTS OF OFFERING CIRCULAR FOR SMALL BUSINESS INVESTMENT COMPANIES

General Instructions

1. The information in the offering circular should be organized to make it easier to understand the organization and operation of the company. The required information need not be in any particular order, except that Items 1 and 2 must be the first and second items in the offering circular.

2. The offering circular, including the cover page, may contain more information than is called for by this Schedule, provided that it is not incomplete, inaccurate, or misleading. Also, the additional information should not, by its nature, quantity, or manner of presentation, obscure or impede understanding of required information.

Item 1. Cover Page

The cover page of the offering circular shall include the following information:

- (a) The name of the issuer;
- (b) The mailing address of the issuer's principal executive offices including the zip code and the issuer's telephone number;
- (c) The date of the offering circular;
- (d) A list of the type and amount of securities offered (e.g., if the securities offered include redemption or conversion features, so state);
- (e) The following statement in capital letters printed in boldface roman type at least as large as ten-point modern type and at least two points leaded:

“THESE SECURITIES ARE OFFERED PURSUANT TO AN EXEMPTION FROM REGISTRATION WITH THE SECURITIES AND EXCHANGE COMMISSION; HOWEVER, THE COMMISSION HAS NOT MADE AN INDEPENDENT DETERMINATION THAT THE SECURITIES BEING OFFERED ARE EXEMPT FROM REGISTRATION. THE SECURITIES AND EXCHANGE COMMISSION DOES NOT PASS UPON THE MERITS OF OR GIVE ITS APPROVAL TO ANY SECURITIES OFFERED OR THE TERMS OF THE OFFERING, NOR DOES IT PASS UPON THE ACCURACY OR COMPLETENESS OF ANY OFFERING CIRCULAR OR OTHER SELLING LITERATURE.”

(f) The name of the underwriter or underwriters, if applicable;

(g) A cross-reference to the place in the offering circular discussing the material risks involved in purchasing the securities, printed in bold-face roman type at least as high as ten-point modern type and at least two points leaded;

(h) The approximate date when the proposed sale to the public will begin; and

(i) The information called for by the following table shall be given, in substantially the tabular form indicated, on the outside front cover page of the offering circular as to all securities being offered (estimate, if necessary):

	Offering price to public	Underwriting discounts and commissions	Proceeds to issuer or other persons
Per share or other unit basis
Total

If the securities are to be offered on a best efforts basis, the cover page should set forth the termination date, if any, of the offering, any minimum required sale, and any arrangements to place the funds received in an escrow, trust, or similar arrangement. The following tabular presentation of the total maximum and minimum securities to be offered should be combined with the table required above:

	Offering price to public	Underwriting discounts and commissions	Proceeds to issuer or other persons
Total Minimum
Total Maximum

Instructions

1. The term *commissions* shall include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which any underwriter is interested, made in connection with the sale of such security.

2. Only commissions paid by the issuer in cash are to be indicated in the table. Commissions paid by other persons or any form of non-cash compensation shall be briefly identified in a note to the table with a cross-reference to a more complete description elsewhere in the offering circular.

3. If the securities are not to be offered for cash, state the basis upon which the offering is to be made.

4. (a) If it is impracticable to state the price to the public, briefly state the method by which the price is to be determined.

(b) Any *finder's fees* or similar payments must be disclosed in a note to the table with

a reference to a more complete discussion in the offering circular.

(c) The amount of the expenses of the offering borne by the issuer, including underwriting expenses to be borne by the issuer, should be disclosed in a note to the table.

5. If any of the securities are to be offered for the account of any security holder, state the identity of each selling security holder, the amount owned by him, the amount offered for his account and the amount to be owned after the offering.

Item 2. General Description of Issuer

(a) Concisely discuss the organization and operation or proposed operation of the issuer. Include the following:

(i) Basic identifying information, including:

(A) The date and form of organization of the issuer and the name of the state under whose laws it is organized;

(B) A brief description of the nature of a small business investment company; and

(C) The classification and subclassification of the issuer as specified in sections 4 and 5 of the Investment Company Act of 1940.

(ii) A concise description of the investment objectives and policies of the issuer, including:

(A) If those objectives may be changed without a vote of the holders of the majority of the voting securities, a brief statement to that effect; and

(B) A brief discussion of how the issuer proposes to achieve its objectives, including:

(1) The types of securities (for example, bonds, convertible debentures, preferred stocks, common stocks) in which it may invest, and the proportion of the assets which may be invested in each such type of security;

(2) If the issuer proposes to have a policy of concentrating in a particular industry or group of industries, identification of such industry or industries. (Concentration, for purposes of this item, is deemed to be 25% or more of the value of the issuer's total assets invested or proposed to be invested in a particular industry or group of industries).

(C) A concise description of any other policies of the issuer that may not be changed without the vote of the majority of the outstanding voting securities, including those policies which the issuer deems to be fundamental within the meaning of Section 8(b) of the Investment Company Act of 1940.

(D) A concise description of those significant investment policies or techniques (such as investing for control or management or investing in other investment companies) that are not described pursuant to subparagraphs (B) or (C) above that issuer employs or has the current intention of employing in the foreseeable future.

NOTE: If the effect of a policy is to prohibit a particular practice, or, if the policy permits a particular practice but the issuer has not employed that practice within the past year and has no current intention of doing so in the foreseeable future, do not include disclosure as to that policy.

(b) Discuss briefly the principal risk factors associated with investment in the issuer, including factors peculiar to the issuer as well as those generally attendant to investment in a small business investment company with investment policies and objectives similar to the issuer.

Item 3. Plan of Distribution

(a) If the securities are to be offered through underwriters, give the names of the principal underwriters, and state the amounts underwritten by each. Identify each underwriter having a material relationship to the issuer and state the nature of the relationship. State briefly the nature of the underwriters' obligation to take the securities.

(b) State briefly the discounts and commissions to be allowed or paid to dealers, including all cash, securities, contracts or other consideration to be received by any dealer in connection with the sale of the securities.

(c) If *finder's fees* are to be paid, identify the *finder*, the nature of the services rendered and the nature of any relationship between the *finder* and the issuer, its officers, directors, promoters, principal stockholders and underwriters (including any affiliates thereof). If a *finder* is not registered with the Commission as a broker or dealer, disclose that fact.

(d) Outline briefly the plan of distribution of any securities being issued which are to be offered through the selling efforts of brokers or dealers or otherwise than through underwriters.

(e)(1) Describe any arrangements for the return of funds to subscribers if all of the securities to be offered are not sold; if there are no such arrangements, so state.

(2) If there will be material delay in the payment of the proceeds of the offering by the underwriter to the issuer, the nature of the delay and the effects on the issuer should be briefly described.

Item 4. Management and Certain Security Holders of the Issuer

(a) Give the full names and complete addresses of all directors, officers, members of any advisory board of the issuer and any person who owns more than 5 percent of any class of securities of the issuer (other than the Small Business Administration if the issuer is a small business investment company as defined in § 230.602(a) of this chapter).

(b) Identify each person who as of a specified date no more than 30 days prior to the

date of filing of this registration statement, controls the issuer as specified in section 2(a)(9) of the Investment Company Act of 1940.

(c) Give the business experience over the last five years of any person named in (a) above who is or is expected to be significantly involved in the investment decisions of the issuer or in providing advisory services, direction or control of portfolio companies of the issuer.

(d) State the aggregate annual remuneration of each of the three highest-paid persons who are officers or directors of the issuer and all officers and directors as a group during the issuer's last fiscal year. State the number of persons in the group referred to above without naming them.

(e) Describe all direct and indirect interests (by security holdings or otherwise) of each person named in (a) above (i) in the issuer and (ii) in any material transactions within the past two years or in any material proposed transaction to which the issuer was or is to be a party. Include the cost to such persons of any assets or services for which any payment by or for the account of the issuer has been or is to be made.

(f) Provide, if applicable, for each investment adviser of the issuer as defined in section 2(a)(20) of the Investment Company Act of 1940:

(i) The name and address of the investment adviser and a brief description of its experience as an investment adviser, and, if the investment adviser is controlled by another person, the name of that person and the general nature of its business. (If the investment adviser is subject to more than one level of control, it is sufficient to give the name of the ultimate control person.)

(ii) A brief description of the services provided by the investment adviser. (If, in addition to providing investment advice, the investment adviser or persons employed by or associated with the investment adviser are, subject to the authority of the board of directors, responsible for overall management of issuer's business affairs, it is sufficient to state that fact in lieu of listing all services provided.)

(iii) A brief description of the investment adviser's compensation. (If the issuer has been in operation for a full fiscal year, provide the compensation paid to the adviser for the most recent fiscal year as a percentage of average net assets. No further information is required in response to this Item if the adviser is paid on the basis of a percentage of net assets and if the issuer has neither changed investment advisers nor changed the basis on which the adviser was compensated during the most recent fiscal year. If the fee is paid in some manner other than on the basis of average net assets, briefly describe the basis of payment. If the registrant has not been in operation for a full fiscal

§ 230.610a

year, state generally what the investment adviser's fee will be as a percentage of average net assets, including any breakpoints, but it is not necessary to include precise details as to how the fee is computed or paid.)

Item 5. Portfolio Companies

Furnish the following information, in the tabular form indicated, with respect to the portfolio companies of the issuer, as of a specified date within 90 days prior to the date of filing the notification with the Commission pursuant to an offering of securities under Regulation E.

Name and address of portfolio companies	Nature of its principal business	Title of securities owned, controlled or held by issuer	Number of shares or amount of loan to portfolio companies

Percentage of class of securities owned, controlled or held by issuer	Value	Percentage of total value of portfolio companies

Instructions

1. Provide the city and state for address of portfolio companies.
2. State the value as of date of balance sheet required under Item 7.

Item 6. Capital Stock and Other Securities

(a) Describe concisely the nature and most significant attributes of the security being offered, including: (i) a brief discussion of voting rights; (ii) restrictions, if any, on the right freely to retain or dispose of such security; (iii) conversion rights, if applicable; and (iv) and any material obligations or potential liability associated with ownership of such security (not including risks).

(b) If the rights of holders of such security may be modified otherwise than by a vote of majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(c) If issuer has any other classes of securities outstanding (other than bank borrowings or borrowings that are not senior securities under Section 18(g) of the Investment Company Act of 1940 identify them and state whether they have any preference over the security being offered.

(d) Describe briefly the issuer's policy with respect to dividends and distributions, including any options shareholders may have as to the receipt of such dividends and distributions.

(e) Describe briefly the tax consequences to investors of an investment in the securities being offered. Such description should not include detailed discussions of applicable

law. If the issuer intends to qualify for treatment under Subchapter M, it is sufficient, in the absence of special circumstances, to state briefly that in that case: (1) the issuer will distribute all of its net income and gains to shareholders and that such distributions are taxable income or capital gains; (ii) shareholders may be proportionately liable for taxes on income and gains of the issuer but that shareholders not subject to tax on their income will not be required to pay tax on amounts distributed to them; and that (iii) the issuer will inform shareholders of the amount and nature of such income or gains.

(f) Where there is a material disparity between the public offering price and the effective cash cost to officers, directors, promoters and affiliated persons for shares acquired by them in a transaction during the past three years, or which they have a right to acquire, there should be included a comparison of the public contribution under the proposed public offering and the effective cash contribution of such persons. In such cases, and in other instances where the extent of the dilution makes it appropriate, the following shall be given: (1) the net tangible book value per share before and after the distribution; (2) the amount of the increase in such net tangible book value per share attributable to the cash payment made by purchasers of the shares being offered; and (3) the amount of the immediate dilution from the public offering price which will be absorbed by such purchasers.

Item 7. Financial Statements

Furnish appropriate financial statements of the issuer as required below. Such statements shall be prepared in accordance with generally accepted accounting principles and practices. The statements required for the issuer's latest fiscal year shall be certified by an independent public accountant or certified public accountant in accordance with Regulation S-X if the issuer has filed or is required to file with the Commission certified financial statements for such fiscal year; the statements filed for the period or periods preceding such latest year need not be certified.

(a) A balance sheet as of a date within 90 days prior to the date of filing the notification with the Commission.

(b) A profit and loss or income statement for each of the last two fiscal years and for any subsequent period up to the date of the balance sheet furnished pursuant to (a) above.

Securities and Exchange Commission

§ 230.701

SCHEDULE B: CONTENTS OF OFFERING CIRCULAR FOR BUSINESS DEVELOPMENT COMPANIES

General Instructions.

Same as General Instructions to Schedule A.

Item 1. Same as Item 1 of Schedule A.

Item 2. General Description of Issuer

(a) Concisely discuss the organization and operation or proposed operation of the issuer. Include the following:

(i) Basic identifying information, including:

(A) The date and form of organization of the issuer and the name of the state under the laws of which it is organized; and

(B) A brief description of the nature of a business development company.

NOTE: A business development company having a wholly-owned small business investment company subsidiary should disclose how the subsidiary is regulated, e.g., as an investment company registered under the Investment Company Act of 1940, and what percentage of the parent company's assets are, or are expected to be, invested in the subsidiary. The business development company should also describe the small business investment company's operations, including any material difference in investment policies between the business development company and its small business investment company subsidiary.

(ii) A concise description of the investment objectives and policies of the issuer, including:

(A) If those objectives may be changed without a vote of the holders of the majority of the voting securities, a brief statement to that effect; and

(B) A brief discussion of how the issuer proposes to achieve such objectives, including:

(1) The types of securities (for example, bonds, convertible debentures, preferred stocks, common stock) in which it may invest, indicating the proportion of the assets which may be invested in each such type of security;

(2) The issuer proposes to have a policy of concentrating in a particular industry or group of industries, identification of such industry or industries. (Concentration, for purposes of this item, is deemed to be 25% or more of the value of the issuer's total assets invested or proposed to be invested in a particular industry or group of industries).

(3) In companies for the purpose of exercising control or management;

(4) The policy with respect to any assets that are not required to be invested in eligible portfolio companies or other companies

qualifying under section 55 of the Investment Company Act of 1940;

(5) The policy with respect to rendering significant managerial assistance to eligible portfolio companies or other companies qualifying under section 55 of the Investment Company Act of 1940;

(6) The policy with respect to investing as part of a group.

(C) Identification of any other policies of the issuer that may not be changed without the vote of the majority of the outstanding voting securities, including the policy not to withdraw its election as a business development company without approval by the majority of the outstanding voting securities.

(D) A concise description of those significant investment policies or techniques (such as investing for control or management) that are not described pursuant to subparagraphs (B) or (C) above that the issuer employs or has the current intention of employing in the foreseeable future.

(b) Discuss briefly the principal risk factors associated with investment in the issuer, including factors peculiar to the issuer as well as those generally attendant to investment in a business development company with investment policies and objectives similar to the issuer.

Item 3. Same as Item 3 of Schedule A.

Item 4. Same as Item 4 of Schedule A.

Item 5. Same as Item 5 of Schedule A.

Item 6. Same as Item 6 of Schedule A.

Item 7. Same as Item 7 of Schedule A.

(Secs. 3(b) and 3(c), Securities Act of 1933 (15 U.S.C. 77c (b) and (c)); sec. 38, Investment Company Act of 1940 (15 U.S.C. 80a-37))

[49 FR 35345, Sept. 7, 1984]

§§ 230.651—230.656 [Reserved]

§ 230.701 Exemption for offers and sales of securities pursuant to certain compensatory benefit plans and contracts relating to compensation.

PRELIMINARY NOTES: 1. This section relates to transactions exempted from the registration requirements of section 5 of the Act (15 U.S.C. 77e). These transactions are not exempt from the antifraud, civil liability, or other provisions of the federal securities laws. Issuers and persons acting on their behalf have an obligation to provide investors with disclosure adequate to satisfy the antifraud provisions of the federal securities laws.

2. In addition to complying with this section, the issuer also must comply with any applicable state law relating to the offer and sale of securities.

3. An issuer that attempts to comply with this section, but fails to do so, may claim any other exemption that is available.