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# Regulation A

## Small Public Offering Exemption

March 1998

1. Overview
  - a. Promulgated under Section 3(b) of the Securities Act of 1933 ("33 Act")(See Statutory Exemptions outline).
  - b. Rarely used exemption but deserves greater attention because of its flexibility.
  - c. Limits offerings under this exemption to \$5 million in a 12 month period, including no more than \$1.5 million in non issuer (selling shareholders) resales.
2. To utilize this exemption, a company must be:
  - a. Organized under the laws of the U.S. or Canada, with its principal place of business in the U.S. or Canada.
  - b. Not be a reporting company under the 34 Act.
  - c. Not be an investment company, or an issuer of fractional undivided interests in oil or gas rights.
  - d. 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.
  - e. Additionally, the company can not be subject to the *Bad Boy Disqualifications*, discussed under Rule 505 in the Regulation D outline and set forth in Rule 262 of the 33 Act.
3. Issuers are required to file a offering statement with the SEC as set forth in Form 1-A.
  - a. With respect to non-financial information, Form 1-A provides issuers with three alternative disclosure options, one of which closely resembles the question and answer format used in Small Corporate Offering Registration ("SCOR") offerings discussed in the Sale of Securities in Florida outline.
  - b. With respect to financial information, the offering statement must include a balance sheet as of the end of the most recent fiscal year and statements of

income, cash flows, and other stockholders' equity for each of the two fiscal years preceding the date of the balance sheet. Financial statements must be prepared in accordance with generally accepted accounting principles in the U.S. *but need not be audited*. If audited financial statements are available, however, they must be provided.

- c. The registration review and offering process is similar to that for companies filing registration statements for public securities offerings, discussed under the 33 Act, with certain exceptions.
  - d. The offering statement must be signed by the issuer, its chief executive officer, chief financial officer, a majority of the members of its board and any selling security holder. A \$500 fee must be paid with the initial filing.
  - e. An offering statement is qualified without SEC action 20 days after filing, unless the offering statement contains a notation, placed in it by the issuer/filing company, to the effect that the offering statement shall only be qualified upon order of the SEC. Note, however, that the issuer is permitted to file an amendment to the offering statement removing this notation.
4. *Test-the-Water Rule* - Rule 254 of the 33 Act
- a. Prior to filing the offering statement with the SEC, an issuer may publish or deliver a written document or make scripted radio or television broadcasts to determine whether there is any interest in the securities intended to be offered.
  - b. The written document may include a coupon, returnable to the issuer, indicating interest in a potential offering.
  - c. No sales may be made until 20 days after the last publication or delivery of the document or radio or television broadcast.
  - d. A copy of the document should be filed with the SEC.
  - e. Rule 254 contains specific requirements regarding the content of the test-the-water documents.
  - f. While the issuer may obtain indications of interest in a proposed offering prior to filing an offering statement with the SEC, no offers may be made until the offering statement is filed with the SEC and no sales may be made until the offering statement has been qualified by the SEC and an offering circular delivered to the prospective investor.
5. While not a condition to an exemption under Regulation A, the issuer and/or each selling shareholder is required to file a report with the SEC concerning sales and use of proceeds on Form 2-A. This report must be filed every six months after qualification until substantially all the proceeds have been applied. A final report, which should be so labeled, is required 30 calendar days after termination, completion or final sale of securities, or the application of proceeds, whichever is the latest event. The temporary investment of proceeds is not considered an application of proceeds for this reporting requirement.
6. Regulation A provides a substantial good faith compliance defense, similar to that provided by Rule 508 of Regulation D, discussed in the Regulation D outline.

**Caution:** Regulation A offerings are subject to the Blue Sky laws of the individual states. Thus, any state securities laws requiring registration must be complied with. Additionally, applicable state laws must be consulted to determine if the special test-the-water provisions of Regulation A are permissible in a given state. With reference to Florida, see § 517.081, Registration Procedure in the Sale of Securities in Florida outline.

This outline summarizes relevant portions of Regulation A promulgated under the Securities Act of 1933. The date of this outline is March 1988. Readers should refer to the foregoing statute and regulation as the definitive source of the contents of this statute and regulation. The contents of this outline should not be construed as legal advice. Readers should not act upon information presented herein without individual professional advice.

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