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Regulation D, Under Sections 4(2) and 3(b) of the Securities Act of 1933, the SEC adopted Regulation D to coordinate the various limited offering exemptions and to streamline the existing requirements applicable to private offers and sales of securities. The Regulation establishes three exemptions from registration in Rules 504, 505, and 506.

Rule 504, which provides an exemption for non-reporting companies unless they are "blank check" issuers or certain "shells", stipulates that: The sale of up to \$1,000,000 of securities in a 12-month period is permitted provided that there is no general solicitation, the securities sold are restricted securities and cannot be resold except pursuant to a registration statement or exemption, and a notice must be filed with the SEC within 15 days after the first sale. Rule 504 does not provide an exemption under any state laws. In certain limited circumstances where an offering is conducted under state accredited investor exemptions, securities offered under Rule 504 may be freely transferrable. Unlike Rules 505 and 506, Rule 504 does not mandate that specified disclosure be provided to purchasers. Nonetheless, the business person should take care that sufficient information is provided to meet the full disclosure obligations which exist under the antifraud provisions of the securities laws.

Rule 505 was adopted by the SEC to provide small businesses more flexibility in raising capital than under Rule 504 - but without the uncertainty of determining the quality of the purchasers that generally is involved in using Rule 506. Rule 505 provides issuers a limited offering exemption for sales of securities totaling up to \$5 million in any 12-month period.

Rule 505 contains certain restrictions regarding "accredited investors" and non-accredited persons. The term "accredited investor" includes:

Banks, insurance companies, registered investment companies, business development companies, or small business investment companies; Certain employee benefit plans for which investment decisions are made by a bank, insurance company, or registered investment adviser; Any employee benefit plan (Within the meaning of Title I of the Employee Retirement Income Security Act) with total assets in excess of \$5 million; Charitable organizations, corporations or partnerships with assets in excess of \$5 million; Directors, executive officers, and general partners of the issuer; Any entity in which all the equity owners are accredited investors; Natural persons with a net worth of at least \$1 million; Any natural person with an income in excess of \$200,000 in each of the two most recent years or joint income with a spouse in excess of \$300,000 for those years and a reasonable expectation of the same income level in the current year; and Trusts with assets of at least \$5 million, not formed to acquire the securities offered, and whose purchases are directed by a sophisticated person.

If the issuer sells any securities to non-accredited investors, it must furnish to all investors the same type of information as required by Regulation A. It must also furnish audited financial statements.

If an issuer other than a limited partnership cannot obtain audited financial statements without unreasonable effort or expense, only the issuer's balance sheet (to be dated within 120 days of the start of the offering) must be audited.

Limited partnerships unable to obtain required financial statements without unreasonable effort or expense may furnish financial statements prepared on the basis of federal income tax requirements and examined and reported on by an independent public or certified accountant in accordance with generally accepted auditing standards; and The issuer must also be available to answer questions by prospective purchasers about the issuer or the offering.

Further restrictions under Rule 505 include:

The total offering price of each issue of securities may not exceed \$5 million. The offering may not be made by means of general solicitation or general advertising. The issuer may sell the securities to an unlimited number of "accredited investors" and to 35 non-accredited persons. There are no requirements of "sophistication" or "wealth" for persons to whom the securities are sold. A company must take any necessary steps to ensure that the purchasers are acquiring securities for investment only, not for resale. The securities are thus "restricted" and investors must be informed that they may not be able to sell except pursuant to a registration statement or

exemption from registration. The issuer is not required to file any offering materials with the Commission. Fifteen days after the first sale in the offering, the issuer must file a notice of sales on Form D. The notice also contains an undertaking under this Rule for the issuer to furnish the Commission, upon its staff's request, any information given to non-accredited purchasers in connection with the offering. Rule 505 does not provide an exemption from state securities laws.

SEC Rule 506 offers and sales of securities by an issuer that satisfy the conditions stated below are deemed transactions not involving any public offering within the meaning of Section 4(2) of the Securities Act. For an offering to be considered exempt from the registration requirements, Rule 506 stipulates: There is no ceiling on the amount of money which may be raised. No general solicitation or general advertising is permitted. The issuer may sell its securities to an unlimited number of accredited investors and 35 non-accredited purchasers. Unlike Rule 505, all non-accredited purchasers (either alone or with a purchaser representative) must be sophisticated - that is, have sufficient knowledge and experience in financial and business matters to render them capable of evaluating the merits and risks of the prospective investment. The term "accredited investor" is defined under Rule 505.

If the issuer sells any securities to non-accredited investors, it must furnish to all investors the same type of information as required by Regulation A. It must also furnish the same financial information as would be required by registration on Form S-1.

If the issuer cannot obtain audited financial statements without unreasonable effort or expense, then financial statements may be provided in accordance with the special treatment described under Rule 505.

The securities sold are "restricted" under the same stipulations in Rule 505.

A company is required to file a notice of the offering on Form D at SEC headquarters within 15 days after the first sale in the offering. All states except New York provide an exemption from state securities laws for offerings under Rule 506 but the company must file a copy of the Form D and pay a filing fee in each state. New York has a distinctive law which makes a Rule 506 offering within that state impractical.

Accredited Investor Exemption

The Small Business Investment Incentive Act of 1980 created a new statutory exemption from registration under the Securities Act for transactions involving offers and sales of securities by any issuer solely to one or more "accredited investors." Under Section 4(6):

The total offering price of each issue of securities under the exemption may not exceed the limit on small offerings set by Section 3(b) the Securities Act, which currently is \$5 million per issue. The offering may not be made by means of any form of advertising or public solicitation.

The term "accredited investor" is defined to include the same individuals and entities as included for purposes of Rules 505 and 506. The issuer is required to file a notice of sales on Form D with the Commission 15 days after the initial sale is made in reliance on the exemption.

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