

SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 200, 230, 240 and 242

[Release Nos. 33-9287A; IA-3341A; IC-29891A; File No. S7-04-11]

RIN 3235-AK90

NET WORTH STANDARD FOR ACCREDITED INVESTORS

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendment.

SUMMARY: We are making a technical amendment to Regulation D and conforming changes to certain other rules. Regulation D was last amended in Release No. 33-9287 (December 21, 2011), which was published in the Federal Register on December 29, 2011. Those amendments became effective on February 27, 2012. Due to a typographical error in that release, the Preliminary Notes to Regulation D were inadvertently deleted from Regulation D. We are restoring the deleted text as new Rule 500. The deleted text is not being restored as Preliminary Notes in order to comply with current Federal Register codification standards.

DATES: Effective Date: [insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Anthony G. Barone, Special Counsel; Karen C. Wiedemann, Attorney Fellow; or Gerald J. Laporte, Chief; Office of Small Business Policy, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-3628, (202) 551-3460.

SUPPLEMENTARY INFORMATION: We are adopting new Rule 500 (17 CFR 230.500) to restore the text that previously appeared as Preliminary Notes to Regulation D, and amending certain of our rules so references to Regulation D in such rules are to 17 CFR §§

230.500 *et seq.* This is a technical amendment restoring text that was inadvertently deleted and updating cross-references to Regulation D to conform to the new codification resulting from this technical amendment. The deleted text is being designated as Rule 500, rather than being restored as Preliminary Notes, in order to comply with current Federal Register codification standards. This amendment does not affect legal rights and obligations under Regulation D. To update cross-references to Regulation D, we are amending Rules 30-1¹ and 800² under “Organization; Conduct and Ethics; and Information and Requests;” Rules 501³ and 502⁴ of Regulation D under the Securities Act of 1933, as amended; Rule 15g-1⁵ under the Securities Exchange Act of 1934, as amended; and Rules 101,⁶ 102⁷ and 104⁸ of Regulation M under the Securities Exchange Act of 1934, as amended.

List of Subjects in 17 CFR Parts 200, 230, 240 and 242

Reporting and recordkeeping requirements, Securities.

For the reasons set out above, Title 17, Chapter II of the Code of Federal Regulations is hereby amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The general authority citation for Part 200 continues to read, in part, as follows:

¹ 17 CFR 200.30-1.

² 17 CFR 200.800.

³ 17 CFR 230.501.

⁴ 17 CFR 230.502.

⁵ 17 CFR 240.15g-1.

⁶ 17 CFR 242.101.

⁷ 17 CFR 242.102.

⁸ 17 CFR 242.104.

Authority: 15 U.S.C. 77o, 77s, 77sss, 78d, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 80a-37, 80b-11, and 7202, unless otherwise noted.

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2. In § 200.30-1(c), remove the reference to “§ 230.501 *et seq.* of this chapter” and add in its place “§ 230.500 *et seq.* of this chapter.”

3. In § 200.800(b), remove the reference to “230.501 thru 230.506” under the heading “17 CFR part or section where identified and described” and add in its place “230.500 thru 230.508.”

PART 230--GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

4. The general authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78o-7 note, 78t, 78w, 78ll(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

5. Add § 230.500 to read as follows:

§ 230.500 Use of Regulation D.

Users of Regulation D (§§ 230.500 *et seq.*) should note the following:

(a) Regulation D relates to transactions exempted from the registration requirements of section 5 of the Securities Act of 1933 (the Act) (15 U.S.C.77a *et seq.*, as amended). Such transactions are not exempt from the antifraud, civil liability, or other provisions of the federal securities laws. Issuers are reminded of their obligation to provide

such further material information, if any, as may be necessary to make the information required under Regulation D, in light of the circumstances under which it is furnished, not misleading.

(b) Nothing in Regulation D obviates the need to comply with any applicable state law relating to the offer and sale of securities. Regulation D is intended to be a basic element in a uniform system of federal-state limited offering exemptions consistent with the provisions of sections 18 and 19(c) of the Act (15 U.S.C. 77r and 77(s)(c)). In those states that have adopted Regulation D, or any version of Regulation D, special attention should be directed to the applicable state laws and regulations, including those relating to registration of persons who receive remuneration in connection with the offer and sale of securities, to disqualification of issuers and other persons associated with offerings based on state administrative orders or judgments, and to requirements for filings of notices of sales.

(c) Attempted compliance with any rule in Regulation D does not act as an exclusive election; the issuer can also claim the availability of any other applicable exemption. For instance, an issuer's failure to satisfy all the terms and conditions of rule 506 (§230.506) shall not raise any presumption that the exemption provided by section 4(2) of the Act (15 U.S.C. 77d(2)) is not available.

(d) Regulation D is available only to the issuer of the securities and not to any affiliate of that issuer or to any other person for resales of the issuer's securities. Regulation D provides an exemption only for the transactions in which the securities are offered or sold by the issuer, not for the securities themselves.

(e) Regulation D may be used for business combinations that involve sales by virtue of rule 145(a) (§230.145(a)) or otherwise.

(f) In view of the objectives of Regulation D and the policies underlying the Act, Regulation D is not available to any issuer for any transaction or chain of transactions that, although in technical compliance with Regulation D, is part of a plan or scheme to evade the registration provisions of the Act. In such cases, registration under the Act is required.

(g) Securities offered and sold outside the United States in accordance with Regulation S (§230.901 through 905) need not be registered under the Act. See Release No. 33-6863. Regulation S may be relied upon for such offers and sales even if coincident offers and sales are made in accordance with Regulation D inside the United States. Thus, for example, persons who are offered and sold securities in accordance with Regulation S would not be counted in the calculation of the number of purchasers under Regulation D. Similarly, proceeds from such sales would not be included in the aggregate offering price. The provisions of this paragraph (g), however, do not apply if the issuer elects to rely solely on Regulation D for offers or sales to persons made outside the United States.

6. In the undesignated introductory text of § 230.501, remove the reference to “§§ 230.501-230.508” and add in its place “§ 230.500 *et seq.* of this chapter.”

7. In the undesignated introductory text of § 230.502, remove the reference to “§§ 230.501-230.508” and add in its place “§ 230.500 *et seq.* of this chapter.”

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

8. The general authority citation for Part 240 continues to read, in part, as

follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78 l, 78m, 78n, 78n-1, 78o, 78o-4, 78p, 78q, 78s, 78u-5, 78w, 78x, 78 ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 *et seq.*; 18 U.S.C. 1350, 12 U.S.C. 5221(e)(3), and Pub. L. 111-203, §939A, 124 Stat. 1376, (2010) unless otherwise noted.

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9. In § 240.15g-1(c), remove the reference to “17 CFR 230.501-230.508” and add in its place “17 CFR 230.500 *et seq.*”

PART 242—REGULATION M

10. The general authority citation for Part 242 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78 l, 78m, 78n, 78n-1, 78o, 78o-4, 78p, 78q, 78s, 78u-5, 78w, 78x, 78 ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 *et seq.*; 18 U.S.C. 1350, 12 U.S.C. 5221(e)(3), and Pub. L. 111-203, §939A, 124 Stat. 1376, (2010) unless otherwise noted.

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11. In § 242.101(b)(10)(i), remove the reference to “§ 230.501 through §230.508” and add in its place “§ 230.500 *et seq.*”

12. In § 242.102(b)(7)(i), remove the reference to “§ 230.501 through §230.508” and add in its place “§ 230.500 *et seq.*”

13. In § 242.104(j)(2)(i), remove the reference to “§ 230.501 through §230.508” and add in its place “§ 230.500 *et seq.*”

Elizabeth M. Murphy
Secretary

Dated: March 23, 2012