

Capital Markets | March 2008

## SEC Mandates Electronic Filing of Form D

### I. Introduction

Regulation D under the Securities Act of 1933 (the "Act") permits the sale of securities by issuers of those securities without registration under the Act, establishing safe harbor provisions for the private placement of securities under the Act. An issuer claiming an exemption under Regulation D will then file a Form D with the U.S. Securities and Exchange Commission (the "SEC"), thereby notifying the SEC of the Regulation D offering.<sup>1</sup>

On February 6, 2008, the SEC adopted proposed rule amendments (the "Amendments") mandating electronic filing of information required by Form D through the Internet.<sup>2</sup> Beginning March 16, 2009, the SEC will require that information required by Form D be filed electronically. Filing will be made through a new Internet system and issuers seeking to file will require the same codes as are required to file on the SEC's electronic filing system, EDGAR, today. Once filed, the data will be publicly available on the SEC Web site and will be interactive and searchable by both regulators and the public.

The Amendments are meant to simplify and restructure Form D and update and revise its requirements. Though the Amendments become a mandatory part of Form D in March 2009, information may be filed voluntarily when

new electronic Form D becomes available on September 15, 2008.

The remainder of this publication describes the Amendments in greater detail.

This publication is intended to serve as a general discussion of the Amendments, and does not purport to be a complete discussion of the issues that are described herein. For more information regarding the Amendments or regarding their application to securities offerings under Regulation D, please contact any of the Shearman & Sterling LLP attorneys listed on the last page of this publication.

### II. Executive Summary of Amendments to Form D

The Amendments will create important new compliance issues in connection with the private placement of securities. Among the key issues raised by the Amendments are:

- *Mandatory electronic submission of Form D.* Form D will be required to be filed electronically after March 16, 2009. Filing will be made through an Internet system using the same issuer-identifier and other codes required on the EDGAR system.
- *Required amendment to Form D.* The requirement that Form D be amended (a) if a material mistake of fact is made in a prior Form D submission, (b) to reflect a change in certain of the previously submitted information, or (c) annually, if the offering is ongoing.
- *Retroactive application to currently filed forms.* Funds and other issuers that have a currently filed Form D for ongoing offerings may become subject to

<sup>1</sup> While an issuer is not required to file Form D in order to rely on the Regulation D safe harbor provisions, Rule 507 as it is currently in place disqualifies an issuer from using a Regulation D exemption if it has been enjoined by a court for violating Rule 503, the Regulation D filing rule, by failing to file the information required by Form D.

<sup>2</sup> See Securities Act Release No. 33-8891, Exchange Act Release No. 34-572280, "Electronic Filing and Revision of Form D" (Feb. 6, 2008), currently available at <http://www.sec.gov/rules/final/2008/33-8891.pdf> (the "Adopting Release").

annual and other amendment requirements as of March 16, 2009.

- *Addition of the date of first sale to Form D.* The addition of the date of first sale to Form D, and the definition of sale for purposes of Form D — under the amendments, “sale” date will be determined by the date on which the investor is irrevocably committed to invest in the offering.
- *Elimination of the requirement to report beneficial owners of the issuer.*
- *Listing of Investment Company Act exemption.* A requirement that investment companies that rely on an exemption from Investment Company Act registration pursuant to Section 3(c) of that Act state the specific exemption on which they are relying.
- *Brokers and finders.* A requirement to report the CRD numbers of any U.S.-registered broker-dealers, and to report all finders.
- *Undertaking to file offering materials.* The signature page of the amended Form D will include an undertaking to provide offering materials to the SEC upon request.<sup>3</sup>

### III. Overview of Regulation D and Form D

#### 3.1 Regulation D

Unless an offering is exempt from registration, it is subject to the registration requirements of the Act. In 1982, the SEC adopted Regulation D as an initiative meant to provide clear criteria for exemptive relief from the registration requirements of the Act, and particularly

to address the capital formation needs of small business.<sup>4</sup> Regulation D sets forth safe harbor provisions that provide a set of criteria, the satisfaction of which justify reliance on the exemption for private placements found at Section 4(2) of the Act. Regulation D also creates exemptions for securities offerings not exceeding \$5 million as authorized by Section 3(b) and for offerings by certain investment companies under Section 3(c) of the Act. Regulation D provides detailed guidance for these safe harbor provisions in Rules 504, 505 and 506.

#### 3.2 Form D

Form D serves as the official notice of an offering of securities made without registration under the Act in reliance on the exemptions provided by Regulation D, Section 3(c) or Section 4(6) under the Act. Form D serves as a means (i) to collect data for use in the SEC’s rulemaking efforts and (ii) to enforce the federal securities laws, including enforcement for the exemptions found in Regulation D. An issuer relying on a securities registration exemption provided by Regulation D, Section 3(c) or Section 4(6) is currently required to file a paper copy of Form D with the SEC not later than 15 days after the first sale of securities.

#### 3.3 Regulation D, Form D, and state securities (“blue sky”) laws

Under Section 18(b)(4)(D) of the Act, any private placement made in accordance with Rule 506 of Regulation D will preempt the operation of state securities laws relating to registration or qualification of securities. However, under Section 18(c) of the Act, states are expressly permitted to require notice filings, a consent to services of process and notice filing fees in connection with any transaction in an preempted security (other than a transaction in a listed security, or a security senior or equal in rank to a listed security). Also of considerable importance, many states have drafted provisions

<sup>3</sup> The new Form D will specify that in the context of the offering materials undertaking, where securities that are the subject of the Form D are covered securities under NSMIA, whether in all instances or due to the nature of the offering that is the subject of the Form D, the states cannot routinely require offering materials under this undertaking or otherwise, but may require the offering materials to the extent Section 18(c)(1) permits them to do so under their anti-fraud authority.

<sup>4</sup> For the Regulation D adopting release, please see Securities Act Release No. 33-6389 (Mar. 8, 1982).

incorporating all of the various exemptions found at Regulation D (including the filing of Form D and the payment of filing fees) into state law exemptive provisions.

Consequently, Regulation D and Form D are important provisions in relation to compliance not only with federal securities laws, but also with state “blue sky” laws.

Though state regulators are working with the SEC to harmonize state submission systems with the Amendments, it is not expected that a “one-stop” filing procedure will be in place by September 15, 2008.

## IV. Description of the Regulation D and Form D Amendments

### 4.1 Regulation D Amendments provide the circumstances for amendment of Form D

The SEC has amended Rule 503 in order to clarify when, how and why an amendment to a previously filed Form D may or must be filed. Form D amendments will be required in the following three instances:

- (i) to correct a material mistake of fact or error in the previously filed notice (as soon as practicable after discovery of the mistake or error);
- (ii) to reflect a change in the information provided in a previously filed notice (as soon as practicable after the change), except that no amendment is required to reflect a change that occurs after the offering terminates;<sup>5</sup> and

<sup>5</sup> No amendment is required to reflect a change in the following information: (i) the address or relationship to the issuer of a related person; (ii) an issuer’s revenues or aggregate net asset value; (iii) the minimum investment amount, if the change is an increase, or if the change does not result in a decrease of more than 10%; (iv) any address or state(s) of solicitation; (v) the total offering amount, if the change is a decrease, or if the change does not result in an increase of more than 10%; (vi) the amount of securities sold in the offering or the amount remaining to be sold; (vii) the number of non-accredited investors, as long there are no more than 35; (viii) the total number of investors who have invested in the offering; or (ix) the amount of sales commissions, finders’ fees or use of proceeds for payments to executive officers, directors or promoters, if the change is a decrease, or if the change does not result in an increase of more than 10%.

(iii) annually, on or before the first anniversary of the filing of the Form D or the filing of the most recent amendment, if the offering is continuing at that time.

If an issuer is required to amend its Form D, amended Rule 503 requires an issuer to provide current information to all previous responses in Form D regardless of why the amendment is filed.<sup>6</sup>

### 4.2 Specific compliance issues with respect to amendment of forms previously filed by entities (including funds) that conduct ongoing offerings

The Amendments, as adopted, do not contain any relief for previously filed forms. Therefore, once fully implemented, the Amendments will require annual and periodic amendments to forms filed in respect of currently ongoing offerings. The SEC has implemented important transition rules relating to this retroactive effect. Specifically:

- During the period from September 15, 2008 through March 15, 2009, an issuer may file either on paper or electronically.<sup>7</sup>
- During the period from September 15, 2008 through March 15, 2009, the new annual and other amendment rules will apply to all new Form D filings regardless of format, and the current amendment requirements (generally speaking, amendment for material change) will continue to apply to all previously filed Form D filings in paper format.
- Commencing on March 16, 2009, the annual and other amendment requirements will apply to all

<sup>6</sup> The SEC also amended Regulation D to take into account comments that information provided on Form D may constitute general solicitation of the sale of securities, which is prohibited in most offerings under Regulation D. However, to address these concerns, the SEC amended Rule 502(c) to include a safe harbor from the prohibition on “general solicitation” and “general advertising” for information provided in a Form D filed with the SEC if the information is provided in good faith and the issuer makes reasonable efforts to comply with the requirements of Form D. An issuer complying with the terms of the safe harbor is assured that the electronic availability of its Form D filing would not, in and of itself, cause the issuer to have violated this prohibition.

<sup>7</sup> See the Adopting Release at page 64.

**prior form filings**, provided that the offering in question is ongoing.<sup>8</sup>

The extension of annual and other amendment requirements to issuers conducting a continuous offering could create compliance requirements for entities such as funds that have not previously amended Form D. Particular care should be paid by hedge, venture capital and private equity funds. Fund administrators will also need to become particularly aware of filing and amendment requirements in order to avoid inadvertent compliance errors.

#### 4.3 Electronic Filing of Form D

With the adoption of the Amendments, paper filings of Form D with the SEC will be eliminated. Consistent with the effort to simplify Form D filings, the new Form D may be signed electronically.<sup>9</sup>

In order to file Form D electronically, an issuer will need the same codes as are required to file on the SEC's electronic filing system, EDGAR. Obtaining these codes is a partially automated and partially manual system that requires an issuer to take action in advance of the time when Form D is required to be filed.<sup>10</sup> Though the Adopting Release suggests that obtaining these codes can be achieved in a fraction of an hour,<sup>11</sup> experience suggests that process may actually take longer.

<sup>8</sup> The SEC justifies the retroactive application of the annual and other amendment requirements to currently filed forms as not being a material burden to issuers and filers. At page 38, the Adopting Release states, "Once the transition period ends, all federal filings will be required to be on new Form D in electronic format and, accordingly, the new amendment rules will apply. We believe that applying the new amendment rules at that time even as to prior filings of current Form D in paper format would not create a significant additional burden due to the lack of a previous electronic version on the system and that confusion likely would result from the lack of a uniform approach to post-transition period amendments that itself could impose a burden."

<sup>9</sup> The rules will require, in general, that electronic filings contain typed signatures, that each signer manually sign a signature page or other document confirming the typed signature by the time the filing is made, and that the issuer maintain the manually signed document for five years and make it available to the SEC upon request.

<sup>10</sup> See the Adopting Release at page 59.

<sup>11</sup> See the Adopting Release at page 70.

#### 4.4 Amendments to Form D Content Requirements

Currently the filing of Form D consists of a paper filing with the SEC, and often with the securities authorities of one or more states.<sup>12</sup> Current Form D requires the issuer to provide information relating to an offer in five sections designated "A" through "E". The new Form D will organize the information requirements around 16 numbered "items" or categories of information. The following summary is intended to provide a by item description of the new Form D resulting from the Amendments. A copy of the new Form D is attached to this client publication.

##### Item 1 – Issuer's Identity

New Form D generally carries over the requirements from current Form D for basic identifying and contact information and information about related persons, but modifies or omits some of these types of requirements. The requirements carried over, however, are restructured to reflect the electronic character of the filing. The new Form D now provides for the identification of multiple issuers in multiple-issuer offerings. The changes eliminate the burden on issuers to file duplicate notices in order to comply with the requirement to file Form D information. As a result, all issuers can be identified in a single filing.

##### Item 2 – Principal Place of Business and Contact Information

New Form D continues the requirement that filers provide place of business and telephone contact information. However, new Form D will no longer allow post office box numbers and "care of" addresses to be used as a place of business.<sup>13</sup> Further, the new Form D will permit, but not

<sup>12</sup> As noted above, pursuant to Section 18(c) of the Act, states are expressly permitted to require notice filings, a consent to service of process and notice filing fees in connection with any transaction in an preempted security (other than a transaction in a listed security, or a security senior or equal in rank to a listed security).

<sup>13</sup> In response to comments encouraging the SEC to continue to permit the use of "care of" and similar addresses, the SEC states that post office boxes and "care of" addresses are no longer allowed to be used by the issuer because they do not readily allow securities enforcement authorities to determine the location of the issuer's operations and personnel responsible for the offering. See the Adopting Release at pages 18-19.

require, the provision of place of business addresses and telephone numbers for each issuer in a multi-issuer offering.

#### Item 3 – Related Persons

In response to privacy concerns, the new Form D no longer requires that issuers provide information about “related persons” to the extent that such person is a holder of 10% or more of a class of the issuer’s equity securities. However, Item 3 will continue to require that the Form D disclose “related persons” to the extent such persons are promoters or are the issuer’s executive officers and directors based on the functions performed by them rather than their titles.

#### Item 4 – Industry Group

The new Form D requires issuers to identify their industry group from a specified list. The requirement to provide industry group information replaces the current requirement in Form D to provide a description of the issuer’s business.

#### Item 5 – Issuer Size

The new Form D requires all issuers, regardless of industry group, to either include revenue range information in the Form D filing or choose the “Decline to Disclose” or “Not Applicable” option (as in the case of a fund that seeks asset appreciation only). The revenue range will be based on the most recently completed fiscal year. Where an issuer has been in existence for less than a year, it may identify its revenues to date.

#### Item 6 – Identification of Claimed Exemption and Exclusion

As carried over from the current Form D requirement, the issuer must still identify the exemption or exemptions being claimed for the offering (i.e. Rule 504, 505 or 506 and Section 4(6), as applicable). However, the issuer is now required to identify the specific paragraph or subparagraph of any Rule 504 exemption being claimed as well as any specific paragraph of Investment Company Act Section 3(c) that the issuer claims for an exclusion from the definition of “investment company” under the Investment Company Act.

#### Item 7 – Type of Filing (including date of first sale)

New Item 7 carries over the current Form D requirement to indicate whether the filing is a new filing or an amendment. New Item 7 will require that the issuer specify in a new filing the date of first sale or indicate the first sale has yet to occur.<sup>14</sup>

With respect to amendment filings, the SEC has as described above provided clarification as to when, how and why an amendment to a Form D may or must be filed. Currently the SEC interprets Rule 503 and the Form D instructions to require amendments in ongoing offerings where there has been a material change in information filed about the offering and where basic information previously submitted about the issuer has materially changed.

#### Item 8 – Duration of Offering

New Item 8 will require the issuer to indicate whether it intends that the offering will last over a year.

#### Item 9 – Type of Securities Offered

New Item 9 will carry over the current requirement to specify the type of securities being offered, such as debt or equity, with additional categories of securities added. However, the issuer will now be required to specify all categories that apply to the securities that are the subject of the exemption(s) specified in response to Item 6.<sup>15</sup>

#### Item 10 – Business Combination Transactions

Form D currently requires that the issuer indicate only whether the offering is an exchange offer. New Item 10 will require the issuer to indicate whether the offering is being made in connection with a business combination

<sup>14</sup> The new Form D instructions define the “date of first sale” as the date on which the first investor is irrevocably contractually committed to invest. The new Form D states that, depending on the terms and conditions of the contract, the date of first sale could be the date on which the issuer receives the investor’s subscription agreement or check.

<sup>15</sup> The new categories are “Security to be Acquired Upon Exercise of Option, Warrant or Other Right to Acquire Security,” “Pooled Investment Fund Interests,” “Tenant-in-Common Securities,” and “Mineral Property Securities.”

such as an exchange (tender) offer, a merger or acquisition, regardless of the type of offering.

#### Item 11 – Minimum Investment Amount

New Item 11 continues to require that the issuer specify the minimum investment amount per investor. In order to not adversely affect employee stock ownership incentive plans the requirement is only applicable to outside investors.<sup>16</sup>

#### Item 12 – Sales Compensation

New Item 12 generally continues the requirement that the issuer provide information relating to sales compensation. In addition, Item 12 adds a requirement to provide the Central Registration Depository (“CRD”) number of each person that is a compensation recipient<sup>17</sup> named in response to Item 12, provided the person has a CRD number.<sup>18</sup> Item 12 also will require that when both a person that receives sales compensation and the person’s associated broker-dealer are reported, the issuer must provide the CRD number, if any, for both.

#### Item 13 – Offering and Sales Amounts

New Item 13 continues to require that the issuer provide the amount of total sales and the total offering amount, but in a restructured, simplified format.

#### Item 14 – Investors

New Item 14 continues to require that an issuer disclose that it intends to sell securities to persons who do not

qualify as accredited investors and the number of such persons who already have invested. The Issuer will now be required to specify the total number of investors in the offering, rather than just the number of accredited investors.

#### Item 15 – Expenses and Use of Proceeds of Offering

New Item 15 removes questions relating to offering expenses and use of proceeds and now will only require the issuer to provide the amounts paid for sales commissions and, separately stated, finders’ fees in connection with the offering. Instructions have been added to clarify interpretive issues that have arisen in completing the form, such as how to respond to this requirement if the amount of an offering is undetermined when the Form D filing is made.

#### Item 16 – Use of Proceeds

New Item 16 will require reporting of the amount of the gross proceeds the issuer used or proposes to use for payments to related persons. Both new Items 15 and 16 will permit clarification where necessary to prevent the information supplied from being misleading.

## 4.5 Signature and Submission

The new Form D has combined the federal and state signature requirements currently in Sections D and E of Form D into one signature requirement. Further, the new Form D has incorporated into the signature block a consent to service of process similar to the one currently used in Form U-2.<sup>19</sup>

<sup>16</sup> Investors will be considered outside investors if they are not employees, officers, directors, general partners, trustees (where the issuer is a business trust), consultants, advisors or vendors of the issuer, its parents, its majority-owned subsidiaries, or majority-owned subsidiaries of the issuer’s parent.

<sup>17</sup> In accordance with the instructions to new Item 12, the term “compensation” means cash or other consideration.

<sup>18</sup> The Central Registration Depository, or CRD, is an electronic system by which the U.S. Financial Industry Regulatory Authority (“FINRA”) maintains qualification, employment and disclosure information in respect of registered securities industry professionals and of FINRA member firms. The CRD is operated by FINRA on its own behalf and on behalf of all of the state securities regulatory authorities. Information regarding CRD is available on FINRA’s Internet Web site, [www.finra.org](http://www.finra.org).

<sup>19</sup> The new signature requirement’s addressing consent to service but not consent to jurisdiction or venue is consistent with the signature requirement in Form ADV [17 CFR 279.1], which can satisfy both federal and state filing requirements for investment adviser registration.

Significantly, the electronic signature found on amended Form D will include an undertaking to provide offering materials to the SEC upon request. The Form will contain a note that states may not “routinely” ask for offering materials, but may do so in the exercise of their anti-fraud powers.

#### 4.6 Free Writing

The new Form D will permit issuers to engage in a limited amount of free writing to the extent necessary to clarify certain responses. In order to limit the amount of free writing, however, the SEC has limited its availability to only a few numbered items and placed a limitation on the number of characters that may be used to clarify a particular response.<sup>20</sup>

<sup>20</sup> Free writing is limited to Items 3 (disclosure of related persons), 10 (description of business combination transactions), 13 (offering and sales amounts), 15 and 16 (expenses and use of proceeds) described above.

## V. Conclusion

The Amendments and the requirement that Form D be filed electronically are important changes to the compliance process for private placements of securities. In addition to changing the compliance process, the Amendments will provide the SEC and state securities regulators with additional (and uniform) information on which basis to direct regulatory and investigatory resources. The Amendments will require ongoing attention to ensure that required changes to responses to Form D are timely filed, including the (new) annual update requirements. Notably, issuers conducting ongoing offerings that have presently filed Form D will be subject to these amendment (including annual amendment) requirements as of March 16, 2009. Finally, the Amendments will place new importance on supplying certain information – such as the date of first sale of securities, or the CRD numbers of offering participants – and on timely filing of Form D with the SEC and with applicable state regulators.

The Amendments create important compliance challenges, particularly for hedge, private equity and venture capital funds, which must now prepare for the new filing and amendment requirements, not only in respect of forthcoming offerings of securities, but also in respect of ongoing offerings that will become subject to annual and other amendment rules. Fund administrators will also need to become particularly aware of filing and amendment requirements in order to avoid inadvertent compliance errors.

This client publication is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific circumstances if desired. For more information on the topics covered in this issue, please contact:

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FORM D

NOTICE OF EXEMPT OFFERING OF SECURITIES

Intentional misstatements or omissions of fact constitute federal criminal violations. See 18 U.S.C. 1001.

You must follow the accompanying [instructions](#) in submitting this notice.

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1. **Issuer's Identity**

**Name of Issuer** \_\_\_\_\_

**Previous Name(s)** \_\_\_\_\_  None

**Jurisdiction of Incorporation/Organization** (dropdown or other list selection feature)

**Entity Type** (dropdown or other list selection feature)

**Year of Incorporation/Organization** (dropdown or other list selection feature to select year or "Yet to Be Formed")

Add Issuer

2. **Principal Place of Business and Contact Information**

**Street Address** \_\_\_\_\_

**City** \_\_\_\_\_ **State/Province** \_\_ (dropdown or other list selection feature)

**Zip/Postal Code** \_\_\_\_\_

**Country**

- U.S.
- Canada
- Other (dropdown or other list selection feature for countries if answer is "Other" than U.S. or Canada)

**Telephone Number** \_\_\_\_\_

Add Information for Additional Issuer(s)

3. **Related Persons**

<u>Full Name</u>	<u>Relationship</u>	<u>Address</u>
_____	<input type="checkbox"/> <a href="#">Executive Officer</a>	_____
	<input type="checkbox"/> <a href="#">Director</a>	_____
	<input type="checkbox"/> <a href="#">Promoter</a>	_____

Clarification of Response (if Necessary): \_\_\_\_\_

Add Related  
Person

4. **Industry Group (dropdown or other list selection feature)**

5. **Issuer Size**

**Revenue Range (for issuers that do not specify “Hedge Fund” or “Other Investment Fund” in response to Item 4)**

- No Revenues
- \$1 - \$1,000,000
- \$1,000,001 - \$5,000,000
- \$5,000,001 - \$25,000,000
- \$25,000,001 - \$100,000,000
- Over \$100,000,000
- Decline to Disclose
- Not Applicable

**Aggregate Net Asset Value Range (for issuers that specify “Hedge Fund” or “Other Investment Fund” in response to Item 4)**

- No Aggregate Net Asset Value
- \$1 - \$5,000,000
- \$5,000,001 - \$25,000,000
- \$25,000,001 - \$50,000,000
- \$50,000,001 - \$100,000,000
- Over \$100,000,000
- Decline to Disclose
- Not Applicable

6. **Federal Exemption(s) and Exclusion(s) Claimed (select all that apply)**

- |  |  |
|--|--|
| <input type="checkbox"/> <a href="#">Rule 504(b)(1) (not (i), (ii) or (iii))</a> | <input type="checkbox"/> <a href="#">Rule 506</a>  |
| <input type="checkbox"/> <a href="#">Rule 504(b)(1)(i)</a>                       | <input type="checkbox"/> <a href="#">Securities Act Section 4(6)</a>                     |
| <input type="checkbox"/> <a href="#">Rule 504(b)(1)(ii)</a>                      | <input type="checkbox"/> <a href="#">Investment Company Act Section 3(c)<sup>1</sup></a> |
| <input type="checkbox"/> <a href="#">Rule 504(b)(1)(iii)</a>                     |  |
| <input type="checkbox"/> <a href="#">Rule 505</a>                                |  |

<sup>1</sup> If the filer selects the Investment Company Act Section 3(c) checkbox, a pop-up or other feature will require the filer to select all claimed exclusions from the definition of “investment company” from among Sections 3(c)(1) through Section 3(c)(14) (except for Section 3(c)(8)).

7. **Type of Filing**  
 New Notice (dropdown or other feature to select “Date of First Sale” or “First Sale Yet to Occur”)  
 Amendment

8. **Duration of Offering**  
 Does the issuer intend this offering to last more than one year?  
 Yes  
 No

9. **Type(s) of Securities Offered (select all that apply)**  
 Equity  
 Debt  
 Option, Warrant or Other Right to Acquire Another Security  
 Security to be Acquired Upon Exercise of Option, Warrant or Other Right to Acquire Security  
 Pooled Investment Fund Interests  
 Tenant-in-Common Securities  
 Mineral Property Securities  
 Other (Describe: \_\_\_\_\_)

10. **Business Combination Transaction**  
 Is this offering being made in connection with a business combination transaction, such as a merger, acquisition or exchange offer?  
 Yes  
 No  
 Clarification of Response (if Necessary): \_\_\_\_\_

11. **Minimum Investment**  
 Minimum investment accepted from any outside investor \$\_\_\_\_\_

12. **Sales Compensation**

Recipient	Recipient CRD Number	Associated Broker or Dealer	Broker or Dealer CRD Number	Street Address	State(s) of Solicitation
					(dropdown or other list selection feature)

Add Recipient

**13. Offering and Sales Amounts**

Total Offering Amount \$ \_\_\_\_\_ or  Indefinite  
Total Amount Sold \$ \_\_\_\_\_  
Total Remaining to be Sold \$[auto subtract] \_\_\_\_\_ or  Indefinite  
Clarification of Response (if Necessary): \_\_\_\_\_

**14. Investors**

Select if securities in the offering have been or may be sold to persons who do not qualify as accredited investors, and enter the number of such non-accredited investors who already have invested in the offering: \_\_\_\_\_

Regardless whether securities in the offering have been or may be sold to persons who do not qualify as accredited investors, enter the total number of investors who already have invested in the offering: \_\_\_\_\_

**15. Sales Commissions and Finders' Fees Expenses**

Provide separately the amounts of sales commissions and finders' fees expenses, if any. If the amount of an expenditure is not known, provide an estimate and check the box next to the amount(s).

Sales Commissions \$ \_\_\_\_\_  Estimate  
Finders' Fees \$ \_\_\_\_\_  Estimate  
Clarification of Response (if Necessary): \_\_\_\_\_

**16. Use of Proceeds**

Provide the amount of the gross proceeds of the offering that has been or is proposed to be used for payments to any of the persons required to be named as executive officers, directors or promoters in response to Item 3 above. If the amount is unknown, provide an estimate and check the box next to the amount.

\$ \_\_\_\_\_  Estimate  
Clarification of Response (if Necessary): \_\_\_\_\_

**Signature and Submission**

Terms of Submission: Please verify the information you have entered and review the Terms of Submission below before signing and clicking SUBMIT below to file this notice.

Printable Version

In submitting this notice, each issuer named above is:

- Notifying the SEC and/or each State in which this notice is filed of the offering of securities described and undertaking to furnish

them, upon written request in accordance with applicable law, the information furnished to offerees.\*

- Irrevocably appointing each of the Secretary of the SEC and the Securities Administrator or other legally designated officer of the State in which the issuer maintains its principal place of business and any State in which this notice is filed, as its agents for service of process, and agreeing that these persons may accept service on its behalf, of any notice, process or pleading, and further agreeing that such service may be made by registered or certified mail, in any Federal or state action, administrative proceeding, or arbitration brought against the issuer in any place subject to the jurisdiction of the United States, if the action, proceeding or arbitration (a) arises out of any activity in connection with the offering of securities that is the subject of this notice, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these statutes; or (ii) the laws of the State in which the issuer maintains its principal place of business or any State in which this notice is filed.
- Certifying that, if the issuer is claiming a Rule 505 exemption, the issuer is not disqualified from relying on Rule 505 for one of the reasons stated in [Rule 505\(b\)\(2\)\(iii\)](#).

Each issuer identified above has read this notice, knows the contents to be true, and has duly caused this notice to be signed on its behalf by the undersigned duly authorized person.

Signature

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

By clicking on SUBMIT below, you are agreeing to the Terms of Submission above.

SUBMIT

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

### **Instructions for Submitting Notice**

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\* This undertaking does not affect any limits Section 102(a) of the National Securities Markets Improvement Act of 1996 (“NSMIA”) [Pub. L. No. 104-290, 110 Stat. 3416 (Oct. 11, 1996)] imposes on the ability of States to require information. As a result, if the securities that are the subject of this Form D are “covered securities” for purposes of NSMIA, whether in all instances or due to the nature of the offering that is the subject of this Form D, States cannot routinely require offering materials under this undertaking or otherwise and can require offering materials only to the extent NSMIA permits them to do so under NSMIA’s preservation of their anti-fraud authority.

## General Instructions

- **Who must file:**

- Each issuer of securities that sells its securities in reliance on an exemption provided in [Regulation D](#) or [Section 4\(6\)](#) of the Securities Act of 1933 must file this notice containing the information requested with the U.S. Securities and Exchange Commission (SEC) and with the state(s) requiring it. If more than one issuer has sold its securities in the same transaction, all issuers should be identified in one filing with the SEC, but some states may require a separate filing for each issuer or security sold.

- **When to file:**

- An issuer must file a new notice with the SEC for each new offering of securities no later than 15 calendar days after the “date of first sale” of securities in the offering as explained in Instruction 7. For this purpose, the date of first sale is the date on which the first investor is irrevocably contractually committed to invest, which, depending on the terms and conditions of the contract, could be the date on which the issuer receives the investor’s subscription agreement or check. An issuer may file the notice at any time before that if it has determined to make the offering. An issuer must file a new notice with each state that requires it at the time set by the state. For state filing information, go to [www.NASAA.org](http://www.NASAA.org). A mandatory capital commitment call does not constitute a new offering, but is made under the original offering, so no new Form D filing is required.
- An issuer may file an amendment to a previously filed notice at any time.
- An issuer must file an amendment to a previously filed notice for an offering:

- to correct a material mistake of fact or error in the previously filed notice, as soon as practicable after discovery of the mistake or error;
  - to reflect a change in the information provided in the previously filed notice, except as provided below, as soon as practicable after the change; and
  - annually, on or before the first anniversary of the most recent previously filed notice, if the offering is continuing at that time.
- **When amendment is not required:** An issuer is not required to file an amendment to a previously filed notice to reflect a change that occurs after the offering terminates or a change that occurs solely in the following information:
    - the address or relationship to the issuer of a related person identified in response to Item 3;
    - an issuer's revenues or aggregate net asset value;
    - the minimum investment amount, if the change is an increase, or if the change, together with all other changes in that amount since the previously filed notice, does not result in a decrease of more than 10%;
    - any address or state(s) of solicitation shown in response to Item 12;
    - the total offering amount, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice, does not result in an increase of more than 10%;
    - the amount of securities sold in the offering or the amount remaining to be sold;
    - the number of non-accredited investors who have invested in the offering, as long as the change does not increase the number to more than 35;
    - the total number of investors who have invested in the offering;

- the amount of sales commissions, finders' fees or use of proceeds for payments to executive officers, directors or promoters, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice, does not result in an increase of more than 10%.
- **Saturdays, Sundays and Holidays:** If the date on which a notice or an amendment to a previously filed notice is required to be filed falls on a Saturday, Sunday or holiday, the due date is the first business day following.
- **Amendment content:** An issuer that files an amendment to a previously filed notice must provide current information in response to all items of this Form D, regardless of why the amendment is filed.
- **How to File:** Issuers must file this notice with the SEC in electronic format. For state filing information, go to [www.NASAA.org](http://www.NASAA.org).
- **Filing Fee:** There is no federal filing fee. For information on state filing fees, go to [www.NASAA.org](http://www.NASAA.org).
- **Definitions of Terms:** Terms used but not defined in this form that are defined in [Rule 405](#) and [Rule 501](#) under the Securities Act of 1933, 17 CFR 230.405 and 230.501, have the meanings given to them in those rules.

### **Item-by-Item Instructions**

1. **Issuer's Identity.** Identify each legal entity issuing any securities being reported as being offered by entering its full name; any previous name used within the past five years; and its jurisdiction of incorporation or organization, type of legal entity, and year of incorporation or organization within the past five years or status as formed over five years ago or not yet formed. If more than one entity is issuing the securities, identify a

primary issuer in the first fields shown and identify additional issuers in the fields that appear.

**2. Principal Place of Business and Contact Information.** Enter a full street address of the issuer's principal place of business. Post office box numbers and "In care of" addresses are not acceptable. Enter a contact telephone number for the issuer. If you identified more than one issuer in response to Item 1, enter the requested information for the primary issuer you identified in response to that item and, at your option, for any or all of the other issuers you identified in the fields that appear.

**3. Related Persons.** Enter the full name and address of each person having the specified relationships with any issuer and identify each relationship:

- Each [executive officer](#) and [director](#) of the issuer and person performing similar functions (title alone is not determinative) for the issuer, such as the general and managing partners of partnerships and managing members of limited liability companies; and
- Each person who has functioned directly or indirectly as a [promoter](#) of the issuer within the past five years of the later of the first sale of securities or the date upon which the Form D filing was required to be made.

If necessary to prevent the information supplied from being misleading, also provide a clarification in the space provided.

**4. Industry Group.** Select the issuer's industry group. If the issuer or issuers can be categorized in more than one industry group, select the industry group that most accurately reflects the use of the bulk of the proceeds of the offering. For purposes of this filing, use the ordinary dictionary and commonly understood meanings of the terms identifying the industry group.

**5. Issuer Size.**

- Revenue Range (for issuers that do not specify “Hedge Fund” or “Other Investment Fund” in response to Item 4): Enter the revenue range of the issuer or of all the issuers together for the most recently completed fiscal year available, or, if not in existence for a fiscal year, revenue range to date. Domestic SEC reporting companies should state revenues in accordance with Regulation S-X under the Securities Exchange Act of 1934. Domestic non-reporting companies should state revenues in accordance with U.S. Generally Accepted Accounting Principles (GAAP). Foreign issuers should calculate revenues in U.S. dollars and state them in accordance with U.S. GAAP, home country GAAP or International Financial Reporting Standards. If the issuer(s) declines to disclose its revenue range, enter “Decline to Disclose.” If the issuer’s(s’) business is intended to produce revenue but did not, enter “No Revenues.” If the business is not intended to produce revenue (for example, the business seeks asset appreciation only), enter “Not Applicable.”
- Aggregate Net Asset Value (for issuers that specify “Hedge Fund” or “Other Investment Fund” in response to Item 4): Enter the aggregate net asset value range of the issuer or of all the issuers together as of the most recent practicable date. If the issuer(s) declines to disclose its aggregate net asset value range, enter “Decline to Disclose.”

**6. Federal Exemption(s) and Exclusion(s) Claimed.** Select the provision(s) being claimed to exempt the offering and resulting sales from the federal registration requirements under the Securities Act of 1933 and, if applicable, to exclude the issuer from the definition of “investment company” under the Investment Company Act of 1940. Select “Rule 504(b)(1) (not (i), (ii) or (iii))” only if the issuer is relying on the

exemption in the introductory sentence of Rule 504 for offers and sales that satisfy all the terms and conditions of Rules 501 and 502(a), (c) and (d).

- 7. Type of Filing.** Indicate whether the issuer is filing a new notice or an amendment to a notice that was filed previously. If this is a new notice, enter the date of the first sale of securities in the offering or indicate that the first sale has “Yet to Occur.” For this purpose, the date of first sale is the date on which the first investor is irrevocably contractually committed to invest, which, depending on the terms and conditions of the contract, could be the date on which the issuer receives the investor’s subscription agreement or check.
- 8. Duration of Offering.** Indicate whether the issuer intends the offering to last for more than one year.
- 9. Type(s) of Securities Offered.** Select the appropriate type or types of securities offered as to which this notice is filed. If the securities are debt convertible into other securities, however, select “Debt” and any other appropriate types of securities except for “Equity.” For purposes of this filing, use the ordinary dictionary and commonly understood meanings of these categories. For instance, equity securities would be securities that represent proportional ownership in an issuer, such as ordinary common and preferred stock of corporations and partnership and limited liability company interests; debt securities would be securities representing money loaned to an issuer that must be repaid to the investor at a later date; pooled investment fund interests would be securities that represent ownership interests in a pooled or collective investment vehicle; tenant-in-common securities would be securities that include an undivided fractional interest in real property other than a mineral property; and mineral property securities would be securities that include an undivided interest in an oil, gas or other mineral property.

- 10. Business Combination Transaction.** Indicate whether or not the offering is being made in connection with a business combination, such as an exchange (tender) offer or a merger, acquisition, or other transaction of the type described in paragraph (a)(1), (2) or (3) of [Rule 145](#) under the Securities Act of 1933. Do not include an exchange (tender) offer for a class of the issuer's own securities. If necessary to prevent the information supplied from being misleading, also provide a clarification in the space provided.
- 11. Minimum Investment.** Enter the minimum dollar amount of investment that will be accepted from any outside investor. If the offering provides a minimum investment amount for outside investors that can be waived, provide the lowest amount below which a waiver will not be granted. If there is no minimum investment amount, enter "0." Investors will be considered outside investors if they are not employees, officers, directors, general partners, trustees (where the issuer is a business trust), consultants, advisors or vendors of the issuer, its parents, its majority owned subsidiaries, or majority owned subsidiaries of the issuer's parent.
- 12. Sales Compensation.** Enter the requested information for each person that has been or will be paid directly or indirectly any commission or other similar compensation in cash or other consideration in connection with sales of securities in the offering, including finders. Enter the CRD number for every person identified and any broker and dealer listed that has a CRD number. CRD numbers can be found at <http://brokercheck.finra.org>. A person that does not have a CRD number need not obtain one in order to be listed, and must be listed when required regardless of whether the person has a CRD number. In addition, enter the State(s) in which the named person has solicited or intends to solicit investors. If more than five persons to be listed are associated persons of the same broker or dealer, enter only the name of the broker or

dealer, its CRD number and street address, and the State(s) in which the named person has solicited or intends to solicit investors.

- 13. Offering and Sales Amounts.** Enter the dollar amount of securities being offered under a claim of federal exemption identified in Item 6 above. Also enter the dollar amount of securities sold in the offering as of the filing date. Select the “Indefinite” box if the amount being offered is undetermined or cannot be calculated at the present time, such as if the offering includes securities to be acquired upon the exercise or exchange of other securities or property and the exercise price or exchange value is not currently known or knowable. If an amount is definite but difficult to calculate without unreasonable effort or expense, provide a good faith estimate. The total offering and sold amounts should include all cash and other consideration to be received for the securities, including cash to be paid in the future under mandatory capital commitments. In offerings for consideration other than cash, the amounts entered should be based on the issuer’s good faith valuation of the consideration. If necessary to prevent the information supplied from being misleading, also provide a clarification in the space provided.
- 14. Investors.** Indicate whether securities in the offering have been or may be sold to persons who do not qualify as accredited investors as defined in [Rule 501\(a\)](#) and provide the number of such investors who already have already invested in the offering. In addition, regardless whether securities in the offering have been or may be sold to persons who do not qualify as accredited investors, specify the total number of investors who already have invested.
- 15. Sales Commission and Finders’ Fees Expenses.** The information on sales commissions and finders’ fees expenses may be given as subject to future contingencies.

**16. Use of Proceeds.** No additional instructions.

**Signature and Submission.** An individual who is a duly authorized representative of each issuer identified must sign, date and submit this notice for the issuer. The capacity in which the individual signed should be set forth in the “Title” space.

Each individual must:

- sign with a typed signature; and
- manually sign a signature page or other document authenticating, acknowledging or otherwise adopting the signature that appears in typed form in the Form D filing on or before the time of filing the Form D.

Each issuer must:

- retain the manually signed document signed on its behalf for five years; and
- provide a copy of the manually signed document to the SEC or its staff upon request.

**Entity Type (for Item 1)**

- Corporation
- Limited Partnership
- Limited Liability Company
- General Partnership
- Business Trust
- Other (Specify)

**Year of Incorporation/Organization (for Item 1)**

- Yet to Be Formed
- Within Last Five Years (Specify Year)
- Over Five Years Ago

**Industry Groups (for Item 4)**

Agriculture

Banking & Financial Services

- Commercial Banking
- Insurance

- Investing
- Investment Banking
- Pooled Investment Fund\*
  - Hedge Fund
  - Private Equity Fund
  - Venture Capital Fund
  - Other Investment Fund
- Other Banking & Financial Services

Business Services

#### Energy

- Coal Mining
- Electric Utilities
- Energy Conservation
- Environmental Services
- Oil & Gas
- Other Energy

#### Health Care

- Biotechnology
- Health Insurance
- Hospitals & Physicians
- Pharmaceuticals
- Other Health Care

Manufacturing

#### Real Estate

- Commercial
- Construction
- REITS & Finance
- Residential
- Other Real Estate

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\* If the Pooled Investment Fund checkbox is selected, pop-ups or other features also will require the filer to select one of the lower level checkboxes designating a specific type of investment fund and select a “yes” or “no” checkbox as to whether the filer is registered as an investment company under the Investment Company Act of 1940. If the “Hedge Fund” or “Other Investment Fund” option is selected, the filer will be asked to specify its aggregate net asset value range or to “Decline to Disclose” that value or specify that the information request is “Not Applicable.”

Retailing

Restaurants

Technology

Computers

Telecommunications

Other Technology

Travel

Airlines & Airports

Lodging & Conventions

Tourism & Travel Services

Other Travel

Other

By the Commission.