Raising Capital:

Securities Law Compliance related to Private and Public Offerings and Resales of Shares

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Without sufficient capital, even a well-run business with great potential may fail. If a founder of a new enterprise cannot personally finance the growth or obtain bank debt financing, the financing of a start-up company tends to follow a predictable pattern, with money being raised from the same types of investors over and over and over. A typical equity investment cycle for a start-up company might be: issuance of founders' shares, sales to "friends and family," sales to a mixed bag of accredited and nonaccredited investors, venture capital financing ("VC") and initial public offering or sale of the enterprise.

The federal regulatory scheme, which applies to all sales of equity interests, takes this typical pattern of investment into account. Following the market crash of 1929, Congress determined that to offer and sell securities to the public (a "distribution"), a filing with and review by the SEC of a registration statement containing financial and other information about the issuer and its securities as well as delivery to investors of a prospectus would be required. This registration process can be very costly - with companies typically spending hundreds of thousands of dollars on accounting, underwriting and legal fees.

Congress realized that it would harm companies seeking money dramatically if it failed to balance the need for businesses to raise money quickly and cheaply against the need for investor protection. To create this balance, Congress determined that a "public" versus a "private" offering was the appropriate place to draw the line and require SEC registration of a public offering.

PRIVATE OFFERINGS

Most start up companies utilize "private offerings" in seeking early financing. Exemptions from the requirements of registration and review by the SEC are provided for these privately negotiated sales that by definition must not involve any general solicitation or general advertising. In very broad terms, exemptions are premised either on the small size of the offering, the private nature of the offering, or the extent to which purchasers need the protections of the securities laws. Offerings that are not registered, and do not qualify for an available exemption, are illegal.

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Most start-ups begin by creating a business plan that they can use when approaching investors. The business plan tells the story of the company. The business plan must convey credibility and accuracy, while at the same time generating excitement and enthusiasm. It should also be professional, realistic and concise.

Early-stage investors typically invest in a "concept" and the associated management team, but a business plan typically includes a description of the following attributes of the enterprise:

- business, products or services, properties, etc.;
- size of market and plan for attracting customers;
- current capitalization (current ownership structure);
- terms of securities being sold (for example, common stock, preferred stock, convertible debt);
- management and principal investors;
- material risks; and
- selected financial data and financial statements (which may include, with appropriate disclaimers) projections of future revenues.

Statements of fact should be supported as fact and statements of opinion or belief must have a reasonable basis. When it comes to discussing risks and uncertainties, do not hide the ball from investors – this will impair your credibility. Remember that even exempt transactions are subject to the antifraud provisions of the federal securities laws.

Depending on the size of the offering and the nature of the purchasers, more or less documentation than a basic business plan may be required. Typical documents in a private financing may include:

- *Term sheet* - contains the essential terms of the investment and business terms of the transaction, such as type of security, valuation/price, liquidation preference, conversion rights, registration rights, pre-emptive rights/rights of first refusal, voting rights, seats on the board of directors and dividends. Although term sheets are not always used, using one will likely save you time and money in the long run because a term sheet helps the parties focus on key issues that need to be documented.
- *Business plan or PPM*[2] - describes the business, products/services, and risks and may provide financial information.
- *Board of director resolutions* - authorizes transaction, reserves shares if the security offered is convertible into other securities issued by the company, etc.

[2] A private placement memorandum ("PPM") is not required for every offering, but, for example, if more than $1 million is raised in a 12-month period, such that the limitations of Rule 504 are surpassed, a PPM would be required to offer securities to nonaccredited investors in reliance on certain exemptions. An offering to "all accredited" investors by comparison does not require a PPM. Even if not required, delivering a PPM or at least a detailed business plan is probably advisable for liability and marketing reasons, particularly in fulfilling the antifraud requirement.

- *Stock purchase agreement or subscription agreement* - sets out the terms, representations and warranties of the parties, and conditions of closing. Establishes the factual basis for exemption under federal securities laws.
- *Accredited investor questionnaire* - if offering is made in reliance on an exemption where investors are to be accredited, then a questionnaire determining whether a potential offeree meets these requirements should be signed by potential investors prior to delivering any additional information about the offering.
- *Certificate of designations/amended and restated articles of incorporation* - sets out the rights, preferences and privileges of preferred stock sold to investors.
- *Investors' rights agreement* - sets out rights of investors such as registration rights and rights of first refusal.
- *Co-sale agreement* - sets out rights of investors to share in any premium and participate in sales of the company's stock by founders and other major stockholders.
- *Voting agreement* - sets out agreements among investors and other major stockholders as to the rights to vote for certain transactions or the right to elect a certain number of members of the Board of Directors.
- *Warrant* - contractual right given to purchaser to buy a specified number of shares at a specified price similar to an option. Sometimes offered as a "kicker" to lower the effective price of the securities purchased.

As discussed above, every offering of equity must either be registered with the SEC or fall under an exemption to the registration requirements. It is advisable to obtain legal counsel to determine which exemptions from the registration requirements are available for the potential financing. If all conditions of the exemption are not met, the sale will not be exempt and purchasers may be entitled to a refund of their purchase price (referred to as rescission rights). The following is a very general description of the most common federal exemptions:

Section 4(2) - the private-offering exemption. Section 4(2) of the Securities Act of 1933 (the "Securities Act") exempts "transactions by an issuer not involving any public offering" from registration. To qualify for this exemption, the purchasers of the securities must:

- have sufficient knowledge and experience in finance and business matters to evaluate the risks and merits of the investment ("sophisticated investor"), or be able to bear the economic risk of investment;
- have access to the type of information normally provided in a prospectus; and
- agree not to resell or distribute the securities to the public.

In addition, no form of general solicitation or general advertising, such as an offering made via the internet, may be used in connection with the offering.

Whether an offering meets the requirements of Section 4(2) is very subjective, so many issuers decide to meet the more defined requirements under other regulations issued by the SEC.

Regulation A. Section 3(b) of the Securities Act authorizes the SEC to exempt from registration securities offerings based purely on their small size. Regulation A was created under Section 3(b) to exempt public offerings not exceeding $5 million in any 12-month period. If you rely on this exemption, you must file an offering statement (called a "Form 1-A) with the SEC for review. The offering statement consists of a notification, offering circular and exhibits.

Regulation A offerings share many characteristics with registered offerings. For example, you must provide purchasers with an offering circular that is similar in content to a prospectus. Like registered offerings, the securities can be offered publicly and are not "restricted," meaning they are freely tradeable in the secondary market after the offering. The principal advantages of Regulation A offerings, as opposed to full registration, are:

- The financial statements are simpler and do not need to be audited.
- There are no Securities Exchange Act of 1934 ("Exchange Act") reporting obligations after the offering (unless the company has more than $10 million in total assets and more than 500 shareholders).
- Companies may choose among three formats to prepare the offering circular, one of which is a simplified question-and-answer document.[3]
- You may "test the waters" (make limited general solicitations) to determine if there is adequate interest in your securities before going through the expense of filing and review with the SEC.

Regulation A offerings historically have not been popular with issuers and investors, probably because there are other exemptions that are easier to use and may be less costly.

Regulation D. Regulation D is a safe harbor promulgated by the SEC under Section 4(2). The three exemptions from Securities Act registration under Regulation D are Rule 504, Rule 505 and Rule 506. Purchasers under Regulation D, similar to in other private offerings, receive "restricted" securities.

- *Rule 504* provides an exemption for the offer and sale of up to $1 million of securities in a 12-month period. Like the other Regulation D exemptions, you may not use a general solicitation or advertising to market the securities. It is important, as with any private offering, that purchasers receive "restricted" securities, meaning that they may not sell the securities without registration or an applicable exemption. Rule 504 is the typical means to accomplish a "friends and family" or "seed capital" offering.
- *Rule 505* provides an exemption for offers and sales of securities totaling up to $5 million in any 12-month period. Under this exemption, you may sell to an unlimited number of "accredited investors"[4] and up to 35 other persons who do not need to satisfy the

[3] The form promulgated by the SEC is available at http://www.sec.gov/about/forms/form1-a.pdf.

[4] An "accredited investor" is:

- a bank, insurance company, registered investment company, business development company, or small business investment company;

sophistication or wealth standards associated with other exemptions. Purchasers must buy for investment only, and not for resale. The issued securities are "restricted." You may not use general solicitation or advertising to sell the securities.

- *Rule 506* provides another exemption for sales of securities under Section 4(2). The amount of capital raised can be unlimited, but the issuer must abide by the following requirements:
  - You cannot use general solicitation or advertising to market the securities.
  - You can sell securities to an unlimited number of accredited investors and up to 35 "sophisticated" nonaccredited investors--that is, they must have sufficient knowledge and experience in financial and business matters to make them capable of evaluating the merits and risks of the prospective investment;
  - You must give nonaccredited investors disclosure documents that are generally the same as those used in registered offerings.

Typically, most issuers chose only to sell securities to accredited investors under Rules 505 and 506 as if the issuer sells securities to any purchaser that is not an accredited investor, the issuer must provide extensive non-financial statement information similar to that which is required in Part I of a registration statement filed under the Securities Act and financial statements which, except for in certain limited circumstances, are required to be audited to such purchaser a reasonable time prior to sale.

Section 4(6) of the Securities Act exempts from registration offers and sales of securities to accredited investors when the total offering price is less than $5 million and for which a Form D has been filed. This exemption also does not permit any form of general advertising or general solicitation. There are no document-delivery requirements.

Rule 701 is a particularly useful exemption. It exempts sales of securities if made to compensate employees according to a *written* plan of compensation. The exemption is available only to private companies that are not subject to Exchange Act reporting requirements. It is useful because it frequently will exempt sales to employees that are not otherwise qualified purchasers under Section 4(2). As with any exempt offering, employees receive "restricted securities" in these transactions and may not freely offer or sell them to the public.

- an employee benefit plan, within the meaning of the Employee Retirement Income Securities Act, if a bank, insurance company, or registered investment advisor makes the investment decisions, or if the plan has total assets in excess of $5 million;
- a charitable organization, corporation or partnership with assets exceeding $5 million;
- a director, executive officer or general partner of the company selling the securities;
- a business in which all the equity owners are accredited investors;
- a natural person with a net worth of at least $1 million;
- a natural person with income exceeding $200,000 in each of the two most recent years or joint income with a spouse exceeding $300,000 for those years and a reasonable expectation of the same income level in the current year; or a trust with assets of at least $5 million, not formed to acquire the securities offered, and whose purchases are directed by a sophisticated person.

Issuers seeking to comply with an exemption from registration need to be aware of the possibility of integration of multiple offerings. The integration provisions under the Securities Act and related regulations come into effect when an issuer is conducting tow or more offerings of securities during the same general time period. If two or more offerings are "integrated" they are deemed to be a single offering and the issuer may no longer have a valid exemption from registration. Issuers must take care to avoid integration, which is why many look to the safe harbor in Regulation D which provides that offerings made at least six months after completion of another offering will not be integrated; provided that during that six month period no offers or sales of securities that are of a same or similar class are made under Regulation D.[5] If a six month window does not exist, the following factors are relevant to the determination of whether two or more securities offerings should be integrated:

- Whether the sales are part of a single plan of financing.
- Whether the sales involve issuance of the same class of securities.
- Whether the sales were made at or about the same time.
- Whether the same type of consideration was received.
- Whether the sales were made for the same general purpose. [6]

As a result of the ongoing need for capital, many issuers determine that they will rely solely on Rule 506 and limit participation to accredited investors so that, if integration occurs, it will be less likely to result in the loss of an exemption under the federal securities laws. While integration is most often discussed in the context of Regulation D, integration of offerings otherwise exempt under Section 4(2), Section 4(6) or Regulation A may also occur. However, Rule 251(c) provides a similar six-month safe harbor for Regulation A offerings.

It should also be noted that an offering that is exempt under the federal securities laws is not necessarily exempt from state securities laws. State exemptions do, however, generally parallel federal exemptions. Often there is a requirement to pay a filing fee, supply state securities regulators with a copy of the offering document, and make a filing with states in which securities are offered and sold. Furthermore, most states have adopted the Uniform Limited Offering Exemption (ULOE), an exemption from the registration requirements of state blue sky laws for non-public offerings of securities. It substantially parallels the requirements of Regulation D under the Securities Act. Further, the passage of the National Securities Markets Improvement Act of 1996 (NSMIA) removed offerings under Rule 506 from state regulation, so ULOE now only applies to offerings under Rule 505. Under the NSMIA, securities offered under Rule 506 and securities offered by an issuer exclusively to its existing security holders where no commission or other remuneration is paid directly or indirectly for soliciting the purchase and sale are defined as "Covered Securities", referred to under state securities laws as "Federal Covered Securities". State securities registration requirements were preempted with respect to "Federal Covered Securities". However, states with filing requirements in place, prior to the adoption of NSMIA may continue to require notice filings, consisting of filing fees and copies of documents filed with the Securities and Exchange Commission (SEC), typically the Form D.

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[5] Rule 502(a).

[6] **See** Non-Public Offering Exemption, Securities Act Release No. 33-4552, 27 Fed. Reg. 11,316 (Nov. 6, 1962).

The terms of investments sold pursuant to private offerings vary greatly. Founders may want to minimize the dilution current shareholders will suffer and may also want to maintain sufficient control over and avoid unnecessary restraints on the direction of the business and transfer of the previously issued shares. Additionally, the underlying companies may not want to restrict ability to seek additional financings or to be acquired in the future, so their management needs to consider terms such as anti-dilution protections carefully. Investors have their own agenda. Aside from wanting the "upside" appreciation of owning equity, investors are most interested in anti-dilution protections and having an exit strategy. They also would like to avoid "downside" risks and avoid windfalls at their expense to noncash contributors. In the negotiation process, investors may seek a variety of concessions, such as restrictions on payment of dividends. Concessions that may be inappropriate in early rounds with angels may become more relevant in later rounds with venture capital financings. Similarly, concessions that might interfere with subsequent larger VC financings should be avoided. Ultimately, the deal points will depend on the issuer's leverage (what the company has to offer investors) and, often, on how badly and quickly the company need the money.

PROPOSED AMENDMENTS TO UPDATE AND RELAX THE PRIVATE AND LIMITED OFFERING EXEMPTIONS UNDER REGULATION D

The SEC has recently proposed certain amendments to the exemptions described above to improve the effectiveness, cost efficiency, and flexibility of its rules and regulations.[7] The proposals are intended to clarify and modernize Regulation D in light of developments in market practice and communications technologies without compromising investor protection.

The SEC's proposed changes to Regulation D:

- create a new exemption from the registration requirements of the Securities Act for offers and sales to "large accredited investors" in which a limited form of written announcement would be permitted;
- update the definition of "accredited investor;"
- shorten the integration safe harbor time period from six months to 90 days; and
- impose uniform restrictions on certain "bad actors" from relying on any of the exemptions in Regulation D.

New Rule 507 Exemption for Large Accredited Investors

Proposed Rule 507 would create a new exemption from the registration requirements of the Securities Act under Regulation D for offers and sales of securities to a new category of "large accredited investors" in which a limited form of written announcement would be permitted. The definition of a "large accredited investor"[8] would be based on the current definition of an accredited investor but with higher dollar-amount thresholds as follows:

[7] SEC Proposed Release No. 33-8828 (August 3, 2007).

[8] Large accredited investors would be considered "qualified purchasers" under Section 18(b)(3) of the Securities Act, and thus securities sold in a Rule 507 offering would be "covered securities," resulting in preemption from state securities regulation.

	Accredited Investor	**Large Accredited Investor**
Legal Entities	• $5 million in assets	• $10 million in investments
Individuals	• $1 million net worth • OR • $200,000 annual income ($300,000 with spouse)	• $2.5 million in investments • OR • $400,000 annual income ($600,000 with spouse)

Certain entities that are subject to government regulation (such as banks), as well as directors and executive officers of the issuer, would qualify as large accredited investors without meeting any required dollar-amount threshold.

Proposed Rule 507 would be similar to Rule 506 in that:

- it would allow an issuer to sell an unlimited amount of securities to an unlimited number of investors who meet the specified criteria;
- it would place no restrictions on the payment of commissions;
- the securities issued would be treated as "restricted securities" under the Securities Act;
- the issuer would be required to exercise reasonable care to make sure purchasers are not taking with a view towards distribution;
- the issuer must file a notice with the SEC on Form D; and
- state regulation of the offering is preempted.[9]

Unlike Rule 506, which does not allow any general solicitation or advertising but allows sales to up to 35 investors that are not accredited investors, a written limited announcement would be allowed under proposed Rule 507, but sales to investors who do not qualify as "large accredited investors" would not be allowed. The announcement can include the issuer's name and address, a brief description of the issuer's business and certain terms of the securities offering. The limited announcement must state prominently that sales will be made to large accredited investors only, that no consideration is being solicited or will be accepted through the announcement, and that the securities have not been registered with or approved by the SEC and are offered and sold pursuant to an exemption. The announcement must be in a written medium, such as a newspaper or on the Internet, and may not be on radio or television.[10]

[9] See discussion of NSMIA above.

[10] Hedge funds, private equity funds and other pooled investment vehicles relying on the exclusion from the definition of "investment company" under Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act of 1940 would not be able to rely on proposed Rule 507 in connection with a securities offering.

Updates to Accredited Investor Definition

Currently, to qualify as an accredited investor, certain entities must have total assets in excess of $5 million and individuals must have either a net worth in excess of $1 million or annual income in excess of $200,000 ($300,000 with their spouse). Under the proposals, a new "investments-owned" alternative standard for determining accredited investor status would be added. For legal entities required to satisfy the $5 million assets test, the proposal would provide an alternate standard of $5 million in investments. For individuals and spouses, the proposals would provide an alternative standard of $750,000 in investments that could be used instead of the current net worth and annual income standards.

The SEC has recognized that inflation, along with the sustained growth in wealth and income in recent years, has resulted in a substantial number of investors surpassing the accredited investor standards. Under the proposed rules, the dollar amount thresholds for both "accredited investors" and "large accredited investors" would be subject to periodic adjustment for inflation.

Shortened Integration Safe Harbor Waiting Period

As discussed above, currently, Rule 502(a) of Regulation D contains an integration safe harbor that provides offers and sales made more than six months before a Regulation D offering or more than six months after a Regulation D offering will not be integrated and considered part of the same offering. Multiple private placements are generally subject to the risk of being integrated by the SEC for purposes of determining the availability of certain exemptions from the registration requirements of the Securities Act. Recognizing that such a long delay inhibits companies, particularly smaller companies, from meeting their capital needs in today's volatile capital markets, the SEC has proposed reducing the amount of time issuers are required to wait in order to rely on the integration safe harbor from six months to 90 days.

Disqualification Provisions

Currently, only Rule 505 imposes "bad actor" disqualification provisions, which prevent issuers from relying on the exemption if the issuer or certain affiliated persons have violated certain laws. Under proposed Rule 502(e), the disqualification provisions would apply to all offerings made under Regulation D, so that the issuer could not rely on any of the Regulation D exemptions if the issuer or certain related persons were "bad actors," which would include those convicted of criminal offenses related to the offer or sale of securities, those adjudicated to have violated the securities laws, and certain suspensions or expulsions from a national securities exchange or association. The length of disqualification is generally five years and up to ten years for certain criminal convictions.

PUBLIC OFFERINGS

An initial public offering, an (IPO), occurs when a company issues common stock or shares to the public for the first time. IPOs are usually undertaken by smaller, younger companies seeking capital to expand, but can also be done by large privately-owned companies looking to become publicly traded. Once a company is publicly traded, it can also complete follow-on public offerings or register the sale of shares previously issued on behalf of current shareholders who would like to have broader ability to sell their previously restricted securities. Additionally, even though a security has been sold through a public offering, it may still not be listed with an exchange. Companies must

also apply and be accepted for listing on exchanges such as the New York Stock Exchange (NYSE) and American Stock Exchange (AMEX) or the Nasdaq Stock Market.

IPOs generally involve one or more investment banks as "underwriters." The company offering its shares, called the "issuer," enters a contract with a lead underwriter to sell its shares to the public. The underwriter then works to obtain commitments for the purchase of the shares the company or its shareholders intend to sell. A large IPO is usually underwritten by a "syndicate" of investment banks led by one or more major investment banks (lead underwriter). Upon selling the shares, the underwriters keep a commission based on a percentage of the value of the shares sold. Public offerings are primarily sold to institutional investors, but some shares are also allocated to the underwriters' retail investors.

Typical documents in a public financing may include:

- *Registration Statement* – the document filed with the SEC composed of two parts, the prospectus which is distributed to investors and the second, which contains the rest of the registration statement and under additional information such as expenses, director indemnifications and exhibits (including employment agreements for key employees and other material contracts),which are easily accessible by the public by visiting the SEC's website. There are several types of registration statements, but most typically one is considering the registration statement on Form S-1, the form for an IPO of a U.S. company.
- *Prospectus* - describes the securities being offered, a description of the company's business, financial statements, biographies of officers and directors, detailed information about their compensation, any litigation that is taking place, a list of material properties and any other material information. A prospectus is required to be filed with the SEC as part of a registration statement. The issuer may not use the prospectus to finalize sales until the registration statement has been declared effective by the SEC, meaning it appears to comply on its face with the various rules governing disclosure.
- *Underwriting Agreement* – defines the relationship between the issuer and the underwriter (the firm that buys the shares, typically to resell to its investors). There are two typical types of underwriting agreements, a "firm commitment offering" where the underwriter buys all of the shares and bears the risk that the investors will not follow through on their orders and a "best efforts offering" where the underwriter, acting as an agent, agrees to do its best to sell the offering to the public, but does not buy the securities outright and does not guarantee that the issuing company will receive any set amount of money.
- *Listing application* – the application to become listed on a national exchange such as the NYSE, AMEX or NASDAQ.

A unique twist on a traditional public offering is an Alternative Public Offering (APO) which is the combination of a reverse merger with a simultaneous Private Investment of Public Equity (PIPE). It allows companies an alternative to the IPO as a means of going public while raising capital. In the reverse merger, the private company becomes public by merging with or being acquired by a public "shell" company. The shell company is a public company that has no assets or liabilities. When the private company and public shell merge together, the combined entity thereafter trades under the previously private company's name rather than the shell company's name as it did before. A PIPE is a transaction in which a publicly traded company sells its stock to investors in a privately negotiated

transaction. The stock is normally sold at a discount to current market value and investors are normally acquiring restricted stock. Often these investors receive registration rights which require the issuer to register their later sale of shares into the public market.

After the registration statement has been completed, it will be filed with the SEC, sent to the NASD and respective listing exchange(s) and the securities law or "Blue Sky" administrators in the states that the company and the underwriter want the offering to be sold. Once the regulators receive the registration statement, they will start a review process or comment period. The SEC, the NASD, the specific listing exchanges, and Blue Sky regulators, may all instruct the company or the underwriters to make certain changes to the disclosure in the registration statement and other ancillary documents before they will permit the shares to be sold publicly. The time where the company is waiting for approval from the SEC is called the "waiting period."

Technically, a registration statement becomes effective with the SEC twenty days after it is filed with the SEC; however, this in practice is very rare and typically takes several months. During this review, the SEC will advise the company through a "comment letter" of areas of the registration statement or other reviewed documents that the SEC believes are deficient, need clarification, or any other issues that the SEC deems relevant. The SEC does not review the registration statement to determine whether the companies business plans result in a good investment. Their review focuses solely on whether the disclosure document complies with the applicable law and SEC releases. The company will have to make revisions to the registration statement and resubmit it to the SEC. This process may take several comment letters and responses before a registration statement becomes effective and the company can sell the offering. In addition to SEC review, a company and underwriter should expect to engage in a similar review process from the NASD, exchanges, and the Blue Sky regulators (however, unlike the SEC, several states will conduct a merit review of offering).

Exchange Act Requirements

Once a company becomes public, it must then comply with the obligations of the Exchange Act. For example, it must file information with the SEC about:

- its operations;
- its officers, directors, and certain shareholders, including salary, various fringe benefits, and transactions between the company and management;
- the financial condition of the business, including financial statements audited by an independent certified public accountant; and
- its competitive position and material terms of contracts or lease agreements.

All of this information becomes publicly available upon filing with the SEC. Key reports include the following:

Proxy filings: A company with Exchange Act registered securities must comply with the SEC's proxy rules whenever it seeks a shareholder vote on corporate matters. These rules require the company to provide a proxy statement to its shareholders, together with a proxy card when soliciting proxies. Proxy statements discuss management and executive compensation, along with descriptions

of the matters up for a vote. If the company is not soliciting proxies but will take a vote on a matter, the company must provide its shareholders with an information statement that is similar to a proxy statement. The proxy rules also require your company to send an annual report to shareholders if there will be an election of directors. These reports contain much of the same information found in the Exchange Act annual reports that a company must file with the SEC, including audited financial statements. The proxy rules also govern when your company must provide shareholder lists to investors and when it must include a shareholder proposal in the proxy statement.

Beneficial ownership reports: Persons who acquire more than five percent of the outstanding shares of a class registered with the SEC must file beneficial owner reports until their holdings drop below five percent. These filings contain background information about the beneficial owners as well as their investment intentions, providing investors and the company with information about accumulations of securities that may potentially change or influence company management and policies.

Transaction reporting by officers, directors and ten percent shareholders: Section 16 of the Exchange Act applies to your company's directors and officers, as well as shareholders who own more than 10% of a class of your company's equity securities registered under the Exchange Act. It requires these persons to report their transactions involving the company's equity securities to the SEC. Section 16 also establishes mechanisms for a company to recover "short swing" profits, those profits an insider realizes from a purchase and sale of a company security within a six-month period. In addition, Section 16 prohibits short selling by these persons of any class of the company's securities, whether or not that class is registered under the Exchange Act.

These obligations continue unless the company satisfies the following "thresholds," in which case the company's filing obligations are suspended:

- your company has fewer than 300 shareholders of the class of securities offered; or
- your company has fewer than 500 shareholders of the class of securities offered and less than $10 million in total assets for each of its last three fiscal years.

SIMPLIFIED FILING REQUIREMENTS FOR SMALLER REPORTING COMPANIES

In amendments effective February 4, 2008, the SEC simplified reporting requirements for what will now be classified as "smaller reporting companies" in an effort to make becoming public an option for more smaller businesses.[11] The new amendments expand the number of smaller companies eligible to use reduced, or "scaled," disclosure requirements, give companies greater flexibility in opting for scaled disclosure requirements, and simplify the structure of the requirements by eliminating Regulation S-B and its associated forms and collapsing most provisions of Regulation S-B into Regulations S-K and S-X.

The New "Smaller Reporting Company" Classification

The amendments significantly expand the universe of companies able to take advantage of scaled disclosure requirements by establishing a category of "smaller reporting companies" that combines

[11] Smaller Reporting Company Regulatory Relief and Simplification, Securities Act Release No. 33-8876, (Dec. 19, 2007).

the existing categories of "small-business issuers" and "non-accelerated filers." In order to qualify as a smaller reporting company, an issuer must have less than $75 million in public float, or, if an issuer is unable to calculate its public float, less than $50 million in revenue in its last completed fiscal year. This raises the public float threshold significantly – from $25 million under Regulation S-B – and eliminates completely the $25 million revenue threshold. As a result, an estimated 1,500 additional small companies will be eligible to use the SEC's scaled reporting requirements. The relevant thresholds under the new classification scheme are:

Public Float Thresholds: Pre- and Post-Release[12]

	Pre-SEC Release	Post-SEC Release
Large Accelerated Filer	≥ $700 million	≥ $700 million
Accelerated Filer	≥ $75 million	≥ $75 million
Non-Accelerated Filer	< $75 million	< $75 million (New category of "Smaller Reporting Companies")
Small Business Issuer	< $25 million *(and < $25 million in revenue)*	< $75 million (New category of "Smaller Reporting Companies")

Flexibility in Choosing Disclosure Standards

Recognizing the tension faced by smaller companies in balancing adequate disclosure with the cost of compliance, the SEC has added some flexibility to the process of electing scaled disclosure requirements. Instead of requiring smaller reporting companies to take an all-or-nothing approach to the election of disclosure requirements, as was required historically under Regulation S-B, the amendments allow them to make elections on an item-by-item basis (though the SEC will evaluate disclosure compliance for eligible companies based only on the scaled requirements). Eligible issuers will be required to check a new box on each registration statement and periodic report indicating that the issuer is a smaller reporting company. Any eligible issuer must check the box—even if it elects not to use the scaled disclosure requirements.

There are some practical limitations. Companies must provide enough disclosure to prevent any portion of their filing from being misleading, and must provide financial statements in a manner that allows for adequate comparison between reporting periods. Also, in the few instances in which the reporting requirements for smaller reporting companies are more rigorous than those for larger companies, smaller reporting companies may not opt for the larger company disclosure requirements.[13]

[12] "Public float" refers to the issuer's aggregate worldwide market value of voting and non-voting common equity held by non-affiliates and is determined for purposes of smaller reporting company eligibility as of the last day of the issuer's most recently completed second fiscal quarter.

[13] Currently, the only examples of this are the related person disclosure requirements for smaller reporting companies under the new Regulation S-K Item 404(d)(1). But it is an interpretive guideline worth noting should any of the scaled requirements be ratcheted up in the future.

RESALES OF SHARES BY SHAREHOLDERS

When an investor acquires restricted securities or holds control securities, such as securities purchased in private offerings, that investor must find an exemption from the SEC's registration requirements to sell those shares. Again, remember, exemptions and registration apply to the transaction not the piece of paper or the share. Section 4(1) provides an exemption from the registration requirements of the Securities Act for "transactions by any person other than an issuer, *underwriter*, or dealer." The question of whether this exemption is available for the resale of securities turns on whether the holder is an underwriter[14] as that term is used in Section 4(1). Rule 144 provides a non-exclusive safe harbor from the definition of underwriter to provide clarity on whether the Section 4(1) exemption is available for the resale of securities and requires that there is adequate public information available, the securities are held for the specified holding period, certain sales volume and manner of sale limitations are complied with, and, where applicable, a Form 144 is filed. Therefore, Rule 144 allows public resale of restricted and control securities if a number of conditions are met and is one of the most common ways that restricted shares purchased in private offerings are sold.[15] The rule is not the exclusive means for selling restricted or control securities, but provides a "safe harbor" exemption to sellers.

The SEC rounded out its efforts in 2007 to improve the effectiveness, cost efficiency, and flexibility of its rules and regulations, particularly with respect to their impact on smaller companies, by issuing its final rules relaxing the requirements of Rule 144 and Rule 145 under the Securities Act of 1933, as amended.[16] The changes to Rule 144 are intended to provide both reporting and non-reporting companies with greater financing flexibility and reduce their cost of capital by providing greater liquidity to affiliate and non-affiliate holders of restricted securities. These new rules became effective on February 15, 2008, and the revised holding periods and other changes to Rule 144 are applicable retroactively to securities acquired before the February 15, 2008, effective date.

As further discussed below, among other things, the recent changes to Rule 144:

- shortened the holding period requirement for restricted securities[17] of reporting companies held by affiliates and non-affiliates to six months,
- shortened the holding period after which unlimited resales are allowed from two years to one year for non-affiliates of reporting and non-reporting companies,
- relaxed Rule 144 filing requirements, and
- eliminated the manner of resale restrictions applicable to non-affiliates.

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[14] Section 2(a)(11) of the Securities Act defines "underwriter" as "any person who has purchased from an issuer with a view to, or offer or sells for an issuer in connection with, the distribution of any security . . . ."

[15] Available at www.law.uc.edu/CCL/33ActRls/rule144.html.

[16] See Securities Act Release No. 33-8869 (December 6, 2007).

[17] Rule 144(a)(3) defines "restricted securities" to include securities acquired directly or indirectly from the issuer, or from an affiliate of this issuer, in a transaction or chain of transactions not involving any public offering, under Rule 144A or pursuant to Regulation S or securities subject to the limitations of Regulation D.

Holding Periods

Before an investor can sell restricted securities in the marketplace, the investor must hold them for at least six months, but can be required to hold longer depending on whether the investor is an affiliate or not and whether the issuer is public or not. Like old Rule 144, the recently adopted revisions to Rule 144 distinguishes between affiliates and non-affiliates with respect to the application of its holding periods and other restrictions. In addition, the revised Rule 144 distinguishes between reporting and non-reporting companies with respect to the availability of the shortened holding period requirements.[18] The holding period begins when the securities were bought and fully paid for.

The SEC included in its adopting release the following helpful table to summarize the new Rule 144 conditions applicable to the resale of restricted securities held by affiliates[19] and non-affiliates of reporting and non-reporting companies:

	Affiliate or Person Selling on Behalf of an Affiliate	**Non-Affiliate (and Has Not Been an Affiliate During the Prior Three Months)**
Restricted Securities of Reporting Issuers	**During six month holding period** no resales under Rule 144 permitted. **After six-month holding period** may resell in accordance with all Rule 144 requirements including: • Current public information • Volume limitations • Manner of sale requirements for equity securities • Filing of Form 144	**During six-month holding period** no resales under Rule 144 permitted. **After six-month holding period but before one year** unlimited public resales under Rule 144 except that the current public information requirement still applies. **After one-year holding period** unlimited public resales under Rule 144; need not comply with any other Rule 144 requirements.

[18] Reporting companies are issuers that have been subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended, for at least 90 days before the Rule 144 sale in question.

[19] An affiliate is a person, such as a director or large shareholder, in a relationship of control with the issuer. Rule 405 (available at http://www.law.uc.edu/CCL/33ActRls/rule405.html).

	Affiliate or Person Selling on Behalf of an Affiliate	Non-Affiliate (and Has Not Been an Affiliate During the Prior Three Months)
Restricted Securities of Non-Reporting Issuers	**During one-year holding period** no resales under Rule 144 permitted. **After one-year holding period** may resell in accordance with all Rule 144 requirements, including: • Current public information • Volume limitations • Manner of sale requirements for equity securities • Filing of Form 144	**During one-year holding period** no resales under Rule 144 permitted. **After one-year holding period** unlimited public resales under Rule 144; need not comply with any other Rule 144 requirements.

The holding period for both affiliates and non-affiliates of restricted securities of reporting companies has been shortened from one year to six months. After the six months, certain non-affiliates of reporting companies may freely resell restricted securities, subject only to the current public information requirement and after one year, may freely resell without restriction under Rule 144. Affiliates of reporting companies will continue to be subject to all applicable Rule 144 requirements after the six-month holding period, including the public information, volume limitation, manner of sale, and Form 144 filing requirements. Additionally, because securities acquired in the public market are not restricted, there is no holding period for an affiliate who purchases securities of the issuer in the marketplace. But, as the shares are still control securities, an affiliate's resale is subject to the other conditions of the rule.

With respect to the restricted securities of non-reporting companies, the SEC retained the one-year holding period for both affiliates and non-affiliates because of its concern that there is a lack of sufficient information and safeguards with respect to non-reporting companies. After the one year, non-affiliates of non-reporting companies may freely resell without compliance with any other Rule 144 requirements. After the one year, affiliates of non-reporting companies may resell in conformity with all applicable Rule 144 requirements, including the public information, volume limitation, manner of sale, and Form 144 filing requirements; since compliance with the public information and

manner of sale requirements will be problematic in the case of non-reporting companies, Rule 144 will be of limited utility for affiliates of non-reporting companies.

Adequate Current Information. Before an affiliate may make a sale, they must be able to show that there is adequate current information about the issuer of the securities available. This generally means the issuer has complied with the periodic reporting requirements of the Exchange Act; however, these types of disclosures are often not available for non-reporting issues. Due to the difficulties associated with meeting the requirements as to public information availability for non-reporting issuers, affiliates often look elsewhere to exempt their sales of restricted stock.

Trading Volume Formula. Affiliates are also subject to volume limitations applicable to the amount of securities they can sell. After the one-year holding period for privately held companies and the six-month holding period for reporting companies, the number of shares an affiliate may sell during any three-month period cannot exceed the greater of 1% of the outstanding shares of the same class being sold, or if the class is listed on a stock exchange or quoted on NASDAQ, the greater of 1% or the average reported weekly trading volume during the four weeks preceding the filing a notice of the sale on Form 144. Over-the-counter stocks, including those quoted on the OTC Bulletin Board and the Pink Sheets, can only be sold using the 1% measurement.

Ordinary Brokerage Transactions. The sales by affiliates must also be handled in all respects as routine trading transactions, and brokers may not receive more than a normal commission. Neither the seller nor the broker can solicit orders to buy the securities.

Filing Notice With the SEC. At the time the current shareholder agrees or offers to sell the restricted shares, the selling affiliate must file a notice with the SEC on Form 144 if the sale involves more than 5,000 shares (or units) or the aggregate sale price of $50,000. These amounts are calculated aggregating sales made in any three-month period. The sale must take place within three months of filing the Form and, if the securities have not been sold, the current affiliate must file an amended notice.

Pursuant to the recent changes, non-affiliates are no longer required to file a Form 144 connection with their sales of restricted securities, are not subject to volume limitations and are not required to utilize ordinary brokerage transactions.

Please let Jackson Walker L.L.P. know if we can be of assistance in your efforts to raise capital or sell restricted stock by contacting Stephanie Chandler at schandler@jw.com or at (210) 978-7704.

FORM D FOR PRIVATE OFFERINGS UNDER REGULATION D

FORM D

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

OMB APPROVAL	
OMB Number:	3235-0076
Expires:	
Estimated average burden hours per response	16.00

FORM D

NOTICE OF SALE OF SECURITIES PURSUANT TO REGULATION D, SECTION 4(6), AND/OR UNIFORM LIMITED OFFERING EXEMPTION

SEC USE ONLY	
Prefix	Serial
DATE RECEIVED	

Name of Offering (☐ check if this is an amendment and name has changed, and indicate change.)

Filing Under (Check box(es) that apply): ☐ Rule 504 ☐ Rule 505 ☐ Rule 506 ☐ Section 4(6) ☐ ULOE

Type of Filing: ☐ New Filing ☐ Amendment

A. BASIC IDENTIFICATION DATA

1. Enter the information requested about the issuer

Name of Issuer (☐ check if this is an amendment and name has changed, and indicate change.)

Address of Executive Offices	(Number and Street, City, State, Zip Code)	Telephone Number (Including Area Code)
Address of Principal Business Operations (if different from Executive Offices)	(Number and Street, City, State, Zip Code)	Telephone Number (Including Area Code)

Brief Description of Business

Type of Business Organization

☐ corporation ☐ limited partnership, already formed ☐ other (please specify):

☐ business trust ☐ limited partnership, to be formed

Actual or Estimated Date of Incorporation or Organization: Month ☐☐ Year ☐☐ ☐ Actual ☐ Estimated

Jurisdiction of Incorporation or Organization: (Enter two-letter U.S. Postal Service abbreviation for State: CN for Canada; FN for other foreign jurisdiction) ☐☐

GENERAL INSTRUCTIONS

Federal:

Who Must File: All issuers making an offering of securities in reliance on an exemption under Regulation D or Section 4(6), 17 CFR 230.501 et seq. or 15 U.S.C. 77d(6).

When To File: A notice must be filed no later than 15 days after the first sale of securities in the offering. A notice is deemed filed with the U.S. Securities and Exchange Commission (SEC) on the earlier of the date it is received by the SEC at the address given below or, if received at that address after the date on which it is due, on the date it was mailed by United States registered or certified mail to that address.

Where To File: U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Copies Required: Five (5) copies of this notice must be filed with the SEC, one of which must be manually signed. Any copies not manually signed must be photocopies of the manually signed copy or bear typed or printed signatures.

Information Required: A new filing must contain all information requested. Amendments need only report the name of the issuer and offering, any changes thereto, the information requested in Part C, and any material changes from the information previously supplied in Parts A and B. Part E and the Appendix need not be filed with the SEC.

Filing Fee: There is no federal filing fee.

State:

This notice shall be used to indicate reliance on the Uniform Limited Offering Exemption (ULOE) for sales of securities in those states that have adopted ULOE and that have adopted this form. Issuers relying on ULOE must file a separate notice with the Securities Administrator in each state where sales are to be, or have been made. If a state requires the payment of a fee as a precondition to the claim for the exemption, a fee in the proper amount shall accompany this form. This notice shall be filed in the appropriate states in accordance with state law. The Appendix to the notice constitutes a part of this notice and must be completed.

ATTENTION

Failure to file notice in the appropriate states will not result in a loss of the federal exemption. Conversely, failure to file the appropriate federal notice will not result in a loss of an available state exemption unless such exemption is predicated on the filing of a federal notice.

SEC 1972 (6-02) 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. 1 of 9

(Entire form available at http://www.sec.gov/about/forms/formd.pdf)

FORM S-1 FOR REGISTRATION OF PUBLIC OFFERING OF SECURITIES

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

OMB APPROVAL	
OMB Number:	3235-0065
Expires:	April 30, 2009
Estimated average burden hours per response	1,176.00

FORM S-1
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

_____
(Exact name of registrant as specified in its charter)

_____
(State or other jurisdiction of incorporation or organization)

_____
(Primary Standard Industrial Classification Code Number)

_____
(I.R.S. Employer Identification Number)

_____
(Address, including zip code, and telephone number,
including area code, of registrant's principal executive offices)

_____
(Name, address, including zip code, and telephone number,
including area code, of agent for service)

_____
(Approximate date of commencement of proposed sale to the public)

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box: ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐ Accelerated filer ☐

Non-accelerated filer ☐ (Do not check if a smaller reporting company) Smaller reporting company ☐

SEC 870 (02-08) **Persons who are to 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.**

(Entire Form available at http://www.sec.gov/about/forms/forms-1.pdf)

FORM OF SHAREHOLDER REPRESENTATION LETTER UNDER RULE 144

[TRANSFER AGENT ADDRESS]
Attn: [TRANSFER AGENT CONTACT]

Re: [COMPANY]

Dear [TRANSFER AGENT CONTACT]:

In connection with my instructions given to you to sell _____ shares of ***[COMPANY]*** (the "**Issuer**") represented by certificate number(s) _____ for my account in the manner permitted by Rule 144 (the "**Rule**"), as promulgated under the Securities Act of 1933, I represent to you as follows:

1. **(Check one)**

   A. ☐ I am an affiliate of the Issuer or was an affiliate of the Issuer during the three months preceding the date of this letter

   B. ☐ I am not an affiliate of the Issuer.

2. During the three months prior to the date of my order, _____ , **[number of shares sold during last ninety (90) days or "No" shares]** of the same class as the above shares (the "Shares") have been sold by me, or any person whose sales must be aggregated with mine, as provided in paragraphs (a) and (e) of Rule 144.

3. I have made no payment to any other person in connection with the broker's execution of my above-mentioned order, and I will not do so. I have not solicited or arranged for the solicitation of orders to buy in anticipation of or in connection with the proposed sale of the Shares pursuant to such order, and I will not do so. I have no sell orders open for the Shares with any other broker or bank and will not place any such sell orders pending completion of this order.

4. If the Shares being sold are "restricted securities" as defined in the Rule, I became the beneficial owner of the Shares on _____ and have, therefore, been the beneficial owner for **[Acquisition Date]** at least [six (6)months/one (1) year].

5. At no time since such date of acquisition have I had a short position in, or any put or other option to dispose of, the securities.

6. [Concurrently with placing this order, I have transmitted one original and two copies of Form 144 to the Securities and Exchange Commission (c/o Document Control, Judiciary Plaza, 450 5th Street, NW, Washington, D.C. 20549). If the Shares are traded on a national securities exchange, I have also transmitted one copy of Form 144 to the principal national securities exchange on which the Shares are traded.][20]

[20] No form need be filed if the amount of the Shares to be sold during any period of three months does not exceed 5,000 shares and the aggregate sale price does not exceed $50,000 or the seller is not an affiliate of the Issuer.

7. It is my bona fide intention to sell these shares within a reasonable time after the date of this letter.

8. I am not aware of any material adverse information regarding the Company which has not been publicly disclosed. If I become aware of any such information prior to the completion of the sale, I will immediately notify the transfer agent to suspend any further transfer until such information is disseminated to the public.

9. I understand that payment of the proceeds of the sale is subject to the Shares being transferred and delivered free of restriction and that transfer of the Shares may be delayed since the certificates bear a restrictive legend.

10. The Issuer and its counsel may rely on the representations contained herein and may also rely on the Broker's Representation Letter transmitted herewith as to the amount of securities actually sold in my account.

11. I represent that the information furnished above is correct and understand that you are relying upon it in executing this order on my behalf.

Dated: _____ _____

Signature

_____

Printed Name of Stockholder

_____

_____

Address of Seller

FORM OF BROKER REPRESENTATION LETTER UNDER RULE 144

[Transfer Agent Address]

Re: [Company Name]

Dear [Transfer Agent]:

In connection with the request by _____ to sell _____ shares of common stock, par value $____ per share, of [Company Name], a _____corporation (the "Company"), represented by certificate number _____, as permitted by Rule 144 promulgated under the Securities Act of 1933, I hereby confirm and represent to you that:

1. We have made reasonable inquiry, as required by Rule 144, and are not aware of any circumstances which would indicate the above individual is failing to comply with Rule 144.

2. We have complied with the manner of sale provisions of paragraph (f) of Rule 144 and have complied with all other applicable requirements of said Rule 144 in connection with the above-described sale.

3. We will do no more than execute the order to sell the securities as an agent for the seller. We will receive no more than the usual and customary compensation in connection with the above-described sale.

4. We have not solicited or arranged, nor will solicit or arrange for customers' orders in connection with this sale.

5. I understand that the transfer agent's delay in transferring the shares may cause a delay in the payment of the proceeds of the sale.

6. I understand that it is the above individual's present intention to sell the securities identified in the enclosed Form 144 within a reasonable time following the date of this letter.

Dated: _____ _____

Signature

_____

Printed Name of Broker

FORM 144

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

OMB APPROVAL	
OMB Number:	3235-0101
Expires:	December 31, 2009
Estimated average burden hours per response	2.00

SEC USE ONLY
DOCUMENT SEQUENCE NO.
CUSIP NUMBER
WORK LOCATION

FORM 144
NOTICE OF PROPOSED SALE OF SECURITIES PURSUANT TO RULE 144 UNDER THE SECURITIES ACT OF 1933

ATTENTION: *Transmit for filing 3 copies of this form concurrently with either placing an order with a broker to execute sale or executing a sale directly with a market maker.*

1 (a) NAME OF ISSUER (Please type or print)	(b) IRS IDENT. NO.	(c) S.E.C. FILE NO.

1 (d) ADDRESS OF ISSUER	STREET	CITY	STATE	ZIP CODE	(e) TELEPHONE NO. AREA CODE	NUMBER

2 (a) NAME OF PERSON FOR WHOSE ACCOUNT THE SECURITIES ARE TO BE SOLD	(b) RELATIONSHIP TO ISSUER	(c) ADDRESS STREET	CITY	STATE	ZIP CODE

INSTRUCTION: The person filing this notice should contact the issuer to obtain the I.R.S. Identification Number and the S.E.C. File Number.

3 (a) Title of the Class of Securities To Be Sold	(b) Name and Address of Each Broker Through Whom the Securities are to be Offered or Each Market Maker who is Acquiring the Securities	SEC USE ONLY Broker-Dealer File Number	(c) Number of Shares or Other Units To Be Sold (See instr. 3(c))	(d) Aggregate Market Value (See instr. 3(d))	(e) Number of Shares or Other Units Outstanding (See instr. 3(e))	(f) Approximate Date of Sale (See instr. 3(f)) (MO. DAY YR.)	(g) Name of Each Securities Exchange (See instr. 3(g))

INSTRUCTIONS:

1. (a) Name of issuer
   (b) Issuer's I.R.S. Identification Number
   (c) Issuer's S.E.C. file number, if any
   (d) Issuer's address, including zip code
   (e) Issuer's telephone number, including area code

2. (a) Name of person for whose account the securities are to be sold
   (b) Such person's relationship to the issuer (e.g., officer, director, 10% stockholder, or member of immediate family of any of the foregoing)
   (c) Such person's address, including zip code

3. (a) Title of the class of securities to be sold
   (b) Name and address of each broker through whom the securities are intended to be sold
   (c) Number of shares or other units to be sold (if debt securities, give the aggregate face amount)
   (d) Aggregate market value of the securities to be sold as of a specified date within 10 days prior to filing of this notice
   (e) Number of shares or other units of the class outstanding, or if debt securities the face amount thereof outstanding, as shown by the most recent report or statement published by the issuer
   (f) Approximate date on which the securities are to be sold
   (g) Name of each securities exchange, if any, on which the securities are intended to be sold

Potential persons who are to 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.

SEC 1147 (02-08)

(Entire form available at http://www.sec.gov/about/forms/form144.pdf)