

May 2021

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### Recommended Citation

Sanford B. Hertz, The Federal Securities Act of 1933: Revised Regulation A, 33 Dicta 307 (1956).

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# THE FEDERAL SECURITIES ACT OF 1933: REVISED REGULATION A

BY SANFORD B. HERTZ\*

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## INTRODUCTION

Pursuant to Section 3(b) under the Securities Act of 1933, as currently amended,<sup>1</sup> the Securities and Exchange Commission is empowered to add any class of securities to the securities already exempted from the registration requirements of this Act, if the Commission finds that registration is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering.<sup>2</sup> From this broad power the Commission has promulgated an exemption from the registration provisions by enacting Regulation A and therefore in effect finding that the registration of such securities prior to public sale "is not necessary in the public interest." Briefly, Regulation A provides an exemption from the registration requirements of the 1933 Act for the sale of certain securities by an issuer not exceeding \$300,000 in any one year. A filing of a letter of notification together with an offering circular and the use of such offering cir-

1. 15 U.S.C.A. § 77c(b). This section states that: "The Commission may from time to time by its rules and regulations, and subject to such terms and conditions as may be prescribed therein, add any class of securities to the securities exempted as provided in this section, if it finds that the enforcement of this subchapter with respect to such securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering; but no issue of securities shall be exempted under this subsection where the aggregate amount at which such issue is offered to the public exceeds \$300,000." (Emphasis supplied.)

2. See 15 U.S.C.A. § 77c(a) (1-11). For an article discussing the "private offering" exemption, see, Mehler, "The Securities Act of 1933: 'Private' or 'Public' Offering," 32 *DICTA* 359 (1955).

cular in the public sale of the securities is a condition precedent to obtaining the exemption.<sup>3</sup>

Recently the Commission revised Regulation A in accordance with what it felt reflected the needs of the industry and to provide for greater protection to the investing public without the necessity of filing a registration statement as required by the 1933 Act.<sup>4</sup> Again by the enactment of this new Regulation A, the Commission was in effect finding that the registration of such securities was not necessary in the public interest and that an exemption from such requirements did adequately protect the investing public.

The purpose of this article will be to discuss and analyze this revised Regulation A with a view to pointing up the substantial changes from the previous regulation and to discuss briefly the application of this regulation. It should also be noted in passing that no attempt will be made to discuss fully all of the terms and conditions of Regulation A, but emphasis will be on only the changes promulgated by its recent revision.<sup>5</sup> Of course, an inherent defect in such an analysis at this early stage is that all of our discussions and views will be conjectural since it is impossible at this point to determine how the Commission or a court of law will interpret this new regulation. With this difficulty in mind, we shall immediately proceed to our study of this revised regulation.

#### AVAILABILITY OF THE REGULATION

The new Regulation, as did the prior one, denies the availability of the exemption for the securities of any issuer if such issuer, any of its predecessors<sup>6</sup> or any affiliated issuer<sup>7</sup> has filed a registration statement which is the subject of any proceeding or examination under Section 8 of the Securities Act of 1933, as amended,<sup>8</sup> or is the subject of any refusal order or stop order entered into by virtue of this section within five years prior to the filing required by Regulation A; is subject to any proceedings under Rule 261 of Regulation A<sup>9</sup> entered within five years prior to the filing; has been convicted within five years prior to the filing of any crime or offense involving the purchase or sale of securities; is subject to any order, judgment or decree of any court entered within five years prior to the filing temporarily or permanently restraining or enjoining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of securities; or is subject to a United States Post Office fraud order.<sup>10</sup>

The new revised regulation, however, adds a more stringent qualification to the availability of the exemption by providing that no exemption will be available under Regulation A if any of the is-

3. For a general discussion of this exemption, see, LOSS, SECURITIES REGULATION, 380 (1951).

4. See Securities Act of 1933, Release No. 3463.

5. For an article on Regulation A before the recent revision, see, Krakover & Mehler, "Some Aspects of The Securities Regulation Law: Regulation 'A' and its Revision," 32 DICTA 71 (1955).

6. Predecessor is defined in the revised regulation in Rule 251 as "... (i) a person the major portion of whose assets have been acquired directly or indirectly by the issuer, or (ii) a person from which the issuer acquired directly or indirectly the major portion of its assets."

7. Affiliate is defined in the revised regulation in Rule 251 as "... a person controlling, controlled by, or under common control with such issuer. An individual who controls an issuer is also an affiliate of such issuer."

8. 15 U.S.C.A. § 77h (Stop order proceeding).

9. Said Rule 261 provides the various grounds upon which the Commission can suspend the exemption under Regulation A. This will be discussed in more detail infra.

10. Rule 252(c) (1) (2) (3) (4) of revised Regulation A.

suer's directors, officers or principal security holders, any of its promoters presently connected with it in any capacity, *any* underwriter of the securities to be offered, or any partner, director or officer of any such underwriter has been convicted, within *ten years* prior to the filing, of any crime or offense involving the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer or investment adviser.<sup>11</sup> The previous regulation authorized only a five-year search of the records to determine whether any of the aforementioned class of persons had been convicted, while the new regulation authorizes a ten-year search of such records. Further, the old regulation spoke only in terms of the *principal* underwriter of the issuer, while the new regulation states that *any* underwriter may be examined to determine if any facts exist which will prohibit the availability of the exemption to the issuer. Thus, because of this, the Commission is given broader authority to scrutinize all members of the principal underwriter's selling group in order to permit the exemption to only those issuers whose associates have not been tainted with any convictions involving security violations.

The new revised regulation goes still further with respect to its examination of whether any of the issuer's directors, officers or principal security holders, any of its promoters, any underwriter or any partner, director or officer of any such underwriter is subject to any order, judgment or decree of any court temporarily or permanently enjoining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer or investment adviser, or is subject to an order of the Commission entered pursuant to Section 15 (b) of the Securities Exchange Act of 1934;<sup>12</sup> or is subject to an order of the Commission entered pursuant to Section 203 (d) or (e) of the Investment Ad-

11. Rule 252(d) (1) of revised Regulation A.

12. 15 U.S.C.A. § 780(b). This section in essence and in part permits the Commission to deny or revoke the registration of any broker or dealer if it finds that such broker or dealer filed any willfully false statements with the Commission and that it is in the public interest to so revoke; or has been convicted within ten years preceding the filing of any felony or misdemeanor involving security transactions; or is permanently or temporarily enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security; or has willfully violated any of the provisions of the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended.

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visers Act of 1940;<sup>13</sup> has been and is suspended or expelled from membership in a national or provincial securities dealers association or a national securities exchange or a Canadian securities exchange; or is subject to a United States Post Office fraud order.<sup>14</sup> The Commission not only eliminated the five-year limitation of the prior regulation but it set no time limitation with respect to a search of the record to ascertain whether any or all of the above persons were subject to any or all of the above disabilities. Thus, for example, if any of the above persons are presently subject to an injunction entered by a court at any time, the exemption would not be available.

The revised regulation again goes one step further than the old one in denying the availability of the exemption for the securities of any issuer if any underwriter of such securities, or any director, officer or partner of any such underwriter was or was named as an underwriter of any securities covered by any registration statement which is the subject of any proceeding or examination under Section 8 of the 1933 Act<sup>15</sup> or is the subject of any refusal order or stop order entered thereunder within five years prior to the filing for the Regulation A exemption; or covered by any filing subject to any proceeding under the Commission's powers and authorities to suspend the Regulation A exemption.<sup>16</sup> This is an additional conditional requirement to the availability of the Regulation A exemption which was absent in the prior regulation.

All of the foregoing conditions may in effect be waived and inapplicable if the Commission determines that it is not necessary or appropriate in the public interest or for the protection of investors that the exemption be denied because of the failure to meet these conditions.<sup>17</sup> Thus is left open a broad power to mitigate under circumstances which do not necessitate a strict compliance with these conditions.

The new regulation also consolidates Regulation D with Regulation A, the former applicable to only security offerings of Canadian companies. Now companies of both the United States and Canada can utilize the exemption provided by Regulation A if, in fact, such offerings meet all of the other terms and conditions of the Regulation A exemption.<sup>18</sup> This consolidation should bring about a consistent administrative policy applicable to both Canadian and United States companies and make administration of the regulation a more efficient process.

#### SPECIAL REQUIREMENTS FOR CERTAIN OFFERINGS

Perhaps the most significant change found in the new regulation is the special requirements which apply to offerings made by an issuer when such issuer was (1) incorporated or organized

13. 15 U.S.C.A. § 80b(d) (e). This section in essence and in part permits the Commission after appropriate hearing to deny or revoke the registration of any applicant under the Investment Company Act.

14. Revised Regulation A, Rule 252(d) (1) (2) (3) (4).

15. See note 8 *supra*.

16. Revised Regulation A, Rule 252(e) (1) (2).

17. Revised Regulation A, Rule 252(f).

18. Revised Regulation A, Rule 252.

within one year prior to the date of filing for the Regulation A exemption and has not had a net income from operations within that year; or when (2) such issuer was incorporated or organized more than one year prior to the date of such filing and has not had a net income from operations, *of the character in which the issuer intends to engage*, for at least one of the last two fiscal years.<sup>19</sup> The italicized portion would indicate that a business association, for example, which has had net income from its manufacturing operations would still be subject to this rule if it intended to engage in a mining venture and did not have net income from such venture. Thus, if any of the foregoing conditions are present, the special requirements of Rule 253 of revised Regulation A must be met before the exemption would be available. We now turn to a specific examination of these requirements.

One provision which did not appear in the prior regulation states in essence that if the issuer conducts its principal business operations in Canada, the securities must be qualified or made eligible for public sale under the laws of Canada and specifically in the Province in which such operations are to be conducted.<sup>20</sup> Thus, if an issuer was subject to this rule and was for any reason unable to qualify its securities for sale in such Province, the exemption provided by Regulation A would not be available.

Rule 254 of revised Regulation A adopts the same language

19. Revised Regulation A, Rule 253(a) (1) (2).

20. Revised Regulation A, Rule 253(b).

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as did Rule 217 under the prior regulation with respect to the monetary limitation of \$300,000 to be offered by an issuer, its predecessors and all of its affiliates within one year prior to the commencement of the proposed offering. However, when the securities to be offered are within the scope of those which must comply with the special requirements of Rule 253, in computing the amount of the securities which may be offered there must be included, in addition to the securities specified in Rule 254, all securities issued prior to the filing or proposed to be issued subsequent to the filing for a consideration consisting in whole or in part of assets or services and held by the person to whom issued, and all securities issued to and held by or proposed to be issued, pursuant to options or otherwise, to any director, officer or promoter of the issuer, or to any underwriter, dealer or security salesman connected with the issuer.<sup>21</sup> Thus, if options are granted to the underwriter of the issuer, the underlying shares which might be obtained by the exercise of the option must be included within the \$300,000 computation and must be qualified under the filing for the Regulation A exemption. For example, if an issuer purported to offer \$300,000 in securities and did not cover such shares subject to option rights in the letter of notification, it would appear that the monetary amount of \$300,000 would be exceeded and that, therefore, the terms and conditions of the exemption would not be met and thus the exemption would not be available for the securities which might be publicly sold.

However, a proviso to this requirement permits that these additional securities or options need not be included within the \$300,000 monetary limitation imposed by Regulation A if provision is made, by escrow arrangements or otherwise, to assure that none of such securities or any interest therein will be reoffered to the public within one year after the commencement of the offering and that any such reoffering will be made in accordance with the provisions of the 1933 Act.<sup>22</sup> It would appear that the most satisfactory method of meeting this requirement would be to provide for an escrow arrangement wherein the securities would be held for the prescribed period of time by an independent agent. In such event, a statement should be included in the escrow agreement itself and the offering circular that there will be no assignment or other disposition of any interest in the escrowed shares during the prescribed period.<sup>23</sup>

In addition to the foregoing requirements, any securities which are subject to this rule may not be offered for the account of any

21. Revised Regulation A, Rule 253(c) (1) (2).

22. Revised Regulation A, Rule 253(c).

23. Under the prior regulation it had been the administrative practice of requiring that any options or warrants issued by any company filing for the exemption be made non-exercisable, and the options and the underlying shares thereof be made non-assignable, non-salable, and non-transferable for a period of not less than one year from the date of the commencement of the proposed offering and until the requirements of the Securities Act of 1933 have been met. In lieu thereof, the options and underlying shares must be qualified under the filing and thus be counted in calculating the \$300,000 amount prescribed by Rule 217 of the prior regulation. Query: Since the requirement to escrow the securities and the options apply to only those companies falling within the language of those which must comply with these special requirements, what of the other companies, outside the scope of these requirements? Must they still "lock in" such options, warrants and underlying shares?

person other than the issuer of such securities.<sup>24</sup> Thus, if an officer or director of the issuer who acquired stock in his company wished to publicly sell this stock, he must either file a registration statement with the Commission or find some other exemption from the registration provisions. He is thus deprived of the use of the exemption permitted by Regulation A.

The prior regulation permitted an issuer to file a statement pursuant to Rule 219(b) with the Commission's Regional Office in order to avail itself of the Regulation A exemption without the necessity of filing and using an offering circular, if in fact such offering did not exceed \$50,000 in any one year. Rule 257 of the new regulation in essence adopts this "short form filing" for security offerings not in excess of \$50,000. However, if the securities of an issuer are subject to the special requirements of Rule 253, this limited filing for small issues is not available and such a company must file and use the offering circular to avail itself of the exemption.<sup>25</sup>

One can quickly see from the foregoing discussion that if an issuer is within the class specified in Rule 253, there are added conditions and requirements to be met before the exemption is available. The Commission by this action has seemingly determined that more stringent requirements are necessary in new and

<sup>24</sup> Revised Regulation A, Rule 253(d).

<sup>25</sup> Revised Regulation A, Rule 253(e).

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"untried" companies in order to better and more effectively protect the investing public.<sup>26</sup>

### LIMITED \$50,000 OFFERING

The new revised regulation, like the old, permits an issuer to offer securities in an amount not to exceed \$50,000 without filing or using an offering circular.<sup>27</sup> As was mentioned above, this special privilege for small offerings is not available if the offerings are subject to the special requirements set forth in Rule 253.<sup>28</sup> This "short form" filing must contain all of the information required to be in the offering circular except the financial statements, such filing having its real value in that no offering circular need be distributed to investors prior to or concurrently with a written offer to sell the securities. In this respect the revised regulation did not change the prior one.

However, one change is evident in that the revised regulation sets forth specific limited matters which cannot be exceeded in advertising offerings made pursuant to this "short form" filing. Thus, the new regulation states that all advertisements can contain only the name of the issuer; the title of the security, amount offered, and the per-unit offering price to the public; the identity of the general type of business of the issuer; a brief statement as to

26. The Commission, however, on the same day it enacted this revised regulation, circulated for public comment a notice of proposed further amendments of Regulation A. This proposal sets forth four basic alternatives which would add further safeguards for the investing public when asked to purchase the securities of relatively new companies. The first proposal would in essence deny the availability of the exemption to the securities of any issuer where such issuer has not had net income for any one full fiscal year within the period of five years immediately preceding the date of filing for the Regulation A exemption. The second alternative would limit the amount of securities which could be offered pursuant to the exemption to 100,000 units for equity securities and 3,000 units for debt securities (bonds, debentures or other evidence of indebtedness). This second alternative would not make the distinction between companies on the basis of net income but would apply to all companies attempting to utilize Regulation A. An apparent effect of this proposal would be to reduce the dollar amounts receivable in companies offering low priced securities. The third alternative is a combination of both the first and second, making the exemption available only to issuers satisfying the net earnings test and then only for offerings of the limited amounts of securities proposed in the second alternative. The fourth alternative would limit the amount of securities which might be offered under the regulation to those issuers who could not satisfy the net earnings requirement, while those issuers which could satisfy such requirements could offer any amount of securities under the regulation so long as such amount did not exceed the \$300,000 amount provided in Rule 254 of revised Regulation A. No conjecture will be made to ascertain whether the Commission will enact any of these proposed amendments, but if it should, the availability of the exemption will, of course, be predicated on compliance with these further conditions. The implication of some of these alternatives would be to deny in toto the exemption for small "untried" companies without net earnings. The advisability of these proposals will be left to others more able than the writer. See, Securities Act of 1933, Release No. 3664, July 23, 1956.

27. Revised Regulation A, Rule 257.

28. See supra.

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the general character and location of its property; and by whom orders will be filled or from whom further information may be obtained.<sup>29</sup> Under the language of the old regulation if a filing was made utilizing the \$50,000 rule, any type of material could be used in the attempt to sell the securities, so long as such material was not fraudulent.<sup>30</sup> Other than this, the new regulation did not change the nature or character of filing under the \$50,000 limited offering.

#### SUSPENSION OF EXEMPTION

The new regulation, like the old, sets forth specific grounds which the Commission may utilize in temporarily suspending the exemption provided by the regulation.<sup>31</sup> However, the revised regulation gives the Commission more latitude, and thus the Commission may suspend the exemption if it has reason to believe that (1) no exemption is available under the regulation; (2) that the material filed contained a false statement of a material fact or omitted to state a material fact necessary to be stated; (3) that the offering is being made or would be made in violation of Section 17 of the Securities Act of 1933<sup>32</sup> (4) that any event occurred after the filing of the notification which would have rendered the exemption unavailable if it occurred prior to the filing; (5) that the issuer, any of its predecessors or any affiliated issuer was indicted for any crime involving security transactions or was enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of securities; (6) that any director, officer, principal security holder, promoter, underwriter, or any partner, director or officer of such underwriter was indicted for any crime or offense involving the purchase or sale of any security or was enjoined from engaging in or continuing any conduct in connection with the purchase or sale of any security; (7) that the issuer or anyone connected with the issuer *failed to cooperate* or has obstructed or refused to permit the making of any investigation by the Commission in connection with any offering made or proposed to be made pursuant to the Regulation A exemption. Thus, if the Commission has reason to believe that any of the foregoing are present, it may enter an order temporarily suspending the exemption provided by the regulation. These grounds now provide a broader base for the Commission to regulate a company filing under Regulation A and by administrative action remove the privilege of the exemption.

The new regulation provides that upon the entry of an order temporarily suspending the exemption, the Commission will promptly give notice to the persons on whose behalf the filing was made, that the order was entered, the reasons for the entry of the order, and that upon receipt of a written request within thirty days after entry, the Commission will within twenty days thereafter set the matter down for hearing. If, however, no hearing is requested, the order will become permanent on the thirtieth day after entry and shall remain effective until it is modified or

29. Revised Regulation A, Rule 257(b).

30. Old Regulation A, Rule 221.

31. Old Regulation A, Rule 223. Revised Regulation A, Rule 261.

32. 15 U.S.C.A. § 77q (anti-fraud section).

vacated by the Commission.<sup>33</sup> This provision modified the procedure of the old regulation after an order was entered in that the prior regulation had no time limitation for making a request for a hearing. Now, however, if such request is not made within thirty days, the order becomes final until vacated by the Commission's own ruling.

#### MISCELLANEOUS PROCEDURAL CHANGES

An issuer filing under revised Regulation A must submit to the Commission's Regional Office four copies of a letter of notification on Form 1-A at least ten days (exclusive of Saturdays, Sundays and holidays) prior to the date on which the initial offering is to be made. Such filing must be made with the Regional Office for the region in which the issuers' principal business operations are conducted or proposed to be conducted. Since the new regulation consolidates Regulation A with Regulation D, previously applicable to only Canadian companies, it further provides that if the issuer has its principal business operations in Canada, the filing must be made with the Regional Office nearest the place where the issuer's principal business operations are conducted. However, if the offering is to be made through a principal underwriter located in the United States, the filing shall be made with the Regional Office for the region in which such underwriter has its principal office.<sup>34</sup>

The new regulation elaborated upon the items required to be disclosed in Form 1-A. Thus, for example, the issuer must set forth the name and address of his counsel, the name and address of counsel for the underwriter, the issuer's name, date and place of incorporation or organization, and additional exhibits, such as, all instruments defining the rights of holders of debt securities, the instruments defining the rights of holders of equity securities (articles of incorporation), all underwriting contracts, a statement to the effect that the underwriter consents to be named in the offering circular as an underwriter, a statement that the accountant, engineer, geologist, appraiser, or any other person whose reports or work might appear in the offering circular has consented to the use of such material, and other exhibits which must be appended to the filing made under Regulation A.<sup>35</sup> No attempt has been made or will be made to fully discuss and analyze all of the disclosures required to be made by this form, but the reader's attention is specifically directed to such form and a careful study is suggested.

The new regulation provides a more complete guide for the issuer in specifying what matters should be discussed and disclosed in the offering circular. Thus, the promulgation of Schedule I, appended to the regulation, codifies many of the administrative regulations and provides the issuer with a more definite guide in the preparation of the offering circular. Again the reader's attention is directed to this Schedule, and a careful study of the material

<sup>33</sup>. Revised Regulation A, Rule 261(b).

<sup>34</sup>. Revised Regulation A, Rule 255.

<sup>35</sup>. See Form 1-A appended to Revised Regulation A.

therein included is strongly suggested before any attempt is made in drafting the offering circular.


The new regulation, like the old, provides that all sales material prepared or authorized by the issuer for use in connection with the offering of the securities should be filed with the Regional Office at least five days (exclusive of Saturdays, Sundays and holidays) prior to any use of such material.<sup>36</sup> The new regulation, however, specifically requires that in addition to all written material, all script of every radio or television broadcast must be filed. Thus the new regulation codifies what was left to implication in the old with respect to radio or television broadcasts.

One change which perhaps should not be grouped with the procedural changes promulgated by the new regulation since it is really a substantive matter is the requirement that if an offering is not completed within nine months from the date of the offering circular, a revised offering circular shall be prepared bringing forth all of the information required up to date.<sup>37</sup> The regulation goes still further in stating that in no event shall an offering circular be used which is false or misleading in the light of the circumstances then existing.<sup>38</sup> This requirement of amending the offering circular within a specified period of time was absent from the old regulation and under that regulation an issuer had to be on his guard to amend the material when substantial changes had

36. Revised Regulation A, Rule 258.

37. Revised Regulation A, Rule 256(e).

38. Ibid.



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taken effect which would make the use of his offering circular misleading. Of course, under the new regulation, if there is a material change in the issuer's business or position, he must amend even before the nine-month period has terminated so that his offering circular will not be false or misleading. A failure to amend within the nine-month period would permit the Commission to enter an order suspending the exemption provided by the regulation on the grounds that "... no exemption is available under this regulation ... or any of the terms or conditions of this regulation have not been complied with ..."<sup>39</sup> A failure to amend when there has been material changes in the issuer's business or position would permit the Commission to suspend the exemption on the grounds that "... the offering circular ... contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading."<sup>40</sup>

The new regulation, like the old, provides that the issuer must submit a report to the Commission's Regional Office every six months so that information will be available to the investing public concerning matters such as when the offering commenced, the number of shares offered, the number of shares sold, the total amount received from such sales, the underwriting expenses and commissions paid or to be paid, a detailed itemization of the use of the funds received, the cash balance retained, and other such information outlining the progress and success of the offering.<sup>41</sup>

However, the issuer, under the old regulation, was obligated to submit such a report within 30 days after the end of each six-month period *following the commencement of the offering*, while the revised regulation requires the filing of such a report within thirty days after the end of each six-month period *following the date of the original offering circular or of the statement required by rule 257* (limited \$50,000 offering).<sup>42</sup> This change will make the administration of enforcing this requirement easier since now a specific and definite date is available to ascertain when this report is due. Under the old regulation, the Regional Office was never sure if the offering had in fact commenced, and if it did, when it had commenced.<sup>43</sup> The filing of this report is essential to complying with the terms and conditions of Regulation A and should be filed at the appropriate time with the Commission's Regional Office.<sup>44</sup>

The new regulation, unlike the old, contains a provision to the effect that if the issuer, any of its directors or officers, any person

39. Revised Regulation A, Rule 261(a) (1).

40. Revised Regulation A, Rule 261(a) (2).

41. Revised Regulation A, Rule 260. Form 2-A appended thereto.

42. Old Regulation A, Rule 224. Revised Regulation A, Rule 260.

43. Under the old regulation the Regional Office would assume that the offering commenced either on the day following the direction to the issuer of a letter waiving the waiting provisions imposed by the filing of the last amendment, or if no such request for acceleration was made to the Commission, the ten-day waiting period was calculated and it was assumed that the offering commenced on the day following the termination of this period.

44. Rule 261(c) (1) of revised Regulation A specifically allows the Commission to enter an order temporarily suspending the exemption if such report is not filed as required by Rule 260.

for whose account any of the securities are to be offered, or any underwriter of the securities to be offered, is not a resident of the United States, each non-resident shall file with the Commission a written irrevocable consent and power of attorney which designates the Securities and Exchange Commission as an agent for the purposes of accepting service of process and stipulates that any civil suit or action may be commenced by the service of such process upon the Commission in any action connected with or arising out of the filing made under Regulation A.<sup>45</sup> After such a filing, the Commission, any member of the investing public, or any creditor of the issuer or the selling security holder, or any other person could acquire adequate jurisdiction over a non-resident where prior to such requirement those persons may have had a right of action without an appropriate forum to bring such action. Such a requirement further implements the Commission's desire to protect the investing public.

### CONCLUSION

What impact the foregoing changes will have upon offerings of securities under the new Regulation A exemption has yet to be seen. However, it seems almost certain that many of the changes promulgated by this new regulation will provide additional material for the investing public to examine before reaching the conclusion of whether to invest or not in any particular securities. From this, from the special requirements placed upon certain offerings, and from the other changes, it would appear that the new regulation will provide additional safeguards to the investing public when securities are offered or sold pursuant to an exemption provided by Regulation A. This revised regulation is further evidence of the Commission's constant scrutiny of security offerings and its effort to protect the investing public.

<sup>45</sup> Revised Regulation A, Rule 262. The Commission has promulgated forms appended to the regulation for the purpose of complying with this rule. See Form 3-A (irrevocable appointment by individual of agent for service of process, pleadings and other papers); Form 4-A (irrevocable appointment by corporation (or other business association) of agent for service of process, pleadings and other papers); Form 5-A (certificate of resolution authorizing irrevocable appointment by corporation (or other business association) of agent for service of process, pleadings and other papers); Form 6-A (irrevocable appointment by partnership of agent for service of process, pleadings and other papers).

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