

any written document or the script of any broadcast to be used in reliance upon this section to the Commission's main office in Washington, D.C. (Attention: Office of Small Business Policy). The document or broadcast script shall either contain or be accompanied by the name and telephone number of a person able to answer questions about the document or the broadcast.

Note: Only solicitation of interest material that contains substantive changes from or additions to previously submitted material need be submitted.

(4) Oral communications with prospective investors and other broadcasts are not made until after submission of the written document or script of the broadcast to the Commission as provided in subparagraph (a)(3) of this section; there is no solicitation or acceptance of money or other consideration, nor of any commitment, binding or otherwise, from any prospective investor in reliance upon this section; and no sale is made until a registration statement is effective pursuant to Section 8 of the Act with respect to the securities offering, or an appropriate exemption from registration is available and utilized;

Note: The written documents, broadcasts and oral communications are each subject to the antifraud provisions of the federal securities laws.

(5) Solicitations of interest in reliance upon the provisions of this section are not made after the filing of a registration statement under the Act; provided, however, that receipt by the issuer after the filing of a registration statement of a coupon from a potential investor provided to such potential investor pursuant to paragraph (b) of this section prior to the filing of a registration statement is consistent with this subparagraph; and

(6) Sales pursuant to a registration statement are not made until 20 calendar days after the last publication or delivery of the document or radio or television broadcast.

(b) Any written document used in reliance upon this section may include a coupon, returnable to the issuer, indicating interest in a potential registered offering, revealing the name, address and telephone number of the prospective investor, and stating clearly and separately that the indication of interest is not binding and that no money should be sent. Such coupon may not request information about the financial profile of the investor, such as income, assets or investment history.

(c) Written solicitation of interest materials used in reliance upon this

section submitted to the Commission as provided in paragraph (a)(3) of this section, and otherwise in compliance with this section shall not be deemed to be a prospectus as defined in Section 2(10) of the Act.

4. By amending § 230.254 by revising paragraph (b)(4), to read as follows:

§ 230.254 Solicitation of interest document for use prior to an offered statement.

* * * * *

(b) * * *

(4) Sales pursuant to an offering circular or registration statement may not be made until 20 calendar days after the last publication or delivery of the document or radio or television broadcast pursuant to this rule or pursuant to § 230.135d.

* * * * *

5. By amending paragraph (d) of § 230.254 by removing the phrase: “, if at least 30 calendar days have elapsed between the last solicitation of interest and the filing of the registration statement with the Commission.”.

PART 232—REGULATION S—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

6. The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79t(a), 80a–8, 80a–29, 8a–30 and 80a–37.

7. By amending § 232.101 by removing the word “and” following the semicolon in paragraph (b)(4), by removing the period at the end of (b)(5) and adding in its place “; and”, and by adding paragraph (b)(6) to read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(b) * * *

(6) Solicitation of interest documents or broadcast scripts submitted to the Commission pursuant to Rule 135d (§ 230.135d of this chapter).

* * * * *

Dated: June 27, 1995.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix To Release

Title: Resolution of the North American Securities Administrators Association, Inc., Regarding the Testing-the-Waters Exemption

Whereas, NASAA recognizes the policy objectives underlying the testing-the-waters exemption drafted by its working group, but has substantial concerns as to whether it can

adequately ensure that investors are protected,

Therefore, be it resolved that NASAA will take no formal action with regard to the proposal so that a two year pilot program may be undertaken by those jurisdictions electing to do so and the results of the program may be carefully considered.

Adopted by the membership of the North American Securities Administrators Association on April 25, 1993 at its Spring Meeting in Washington, D.C.

Proposed Statement of Policy on Solicitation of Interest (Test the Waters)

Note: This proposed rule has not been adopted by the NASAA membership by a resolution adopted April 25, 1993, the membership voted to take no action on the proposal pending a study of its effect in those jurisdictions that choose to adopt its use on an experimental basis. It is being published solely to provide a uniform basis for this pilot project that will attempt to determine if such an exemptive rule can be implemented without jeopardizing investor protection.

Solicitations of Interest prior to the Filing of the Registration Statement:

(1) An offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus (or its equivalent) for such security is exempt from section [301] of the Act if all of the following conditions are satisfied:

(a) The issuer is or will be a business entity organized under the laws of one of the states or possessions of the United States or one of the provinces or territories of Canada, is engaged in or proposes to engage in a business other than petroleum exploration or production or mining or other extractive industries and is not a “blind pool” offering or other offering for which the specific business or properties cannot now be described.

(b) The offeror intends to register the security in this state and conduct its offering pursuant to either Regulation A or Rule 504 of Regulation D, as promulgated by the Securities and Exchange Commission.

(c) Ten (10) business days prior to the initial solicitation of interest under this rule, the offeror files with the [Administrator] a Solicitation of Interest Form along with any other materials to be used to conduct solicitations of interest, including, but not limited to, the script of any broadcast to be made and a copy of any notice to be published.

(d) Five (5) business days prior to usage, the offeror files with the [Administrator] any amendments to the foregoing materials or additional materials to be used to conduct solicitations of interest, except for materials provided to a particular offeree pursuant to a request by that offeree.

(e) No Solicitation of Interest Form, script, advertisement or other material which the offeror has been notified by the [Administrator] not to distribute is used to solicit indications of interest.

(f) Except for scripted broadcasts and published notices, the offeror does not communicate with any offeree about the contemplated offering unless the offeree is