

# **Securities Law Compliance Manual**

*Manual for Regulation S Offerings*



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# SECURITIES LAW AND COMPLIANCE MANUAL

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*for Regulation S Offerings*

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## INTRODUCTION

The SEC adopted Regulation S to provide a “safe harbor” exemption from registration under the Securities Act of 1933, as amended (the “1933 Act”) for offerings and sales of securities occurring outside the U.S. Regulation S was intended to help U.S. and foreign companies raise capital overseas quickly and inexpensively without having to comply with the expensive and lengthy registration process required under Section 5 of the 1933 Act. By adopting Regulation S as a “safe harbor” exemption, the SEC is affirming that someone who complies with its requirements will definitely have the benefit of the Regulation S exemption. However, Regulation S is not the exclusive means that must be employed to fall within an exemption for the offering.

Also, it is important to mention that Regulation S does not establish an exemption from the antifraud, civil liability or the broker-dealer registration requirements of the Securities Exchange Act of 1934, as amended (“1934 Act”), or other provisions of the Federal securities laws.

Regulation S is comprised of the following provisions:

- Preliminary Notes
- Rule 901: General Statement
- Rule 902: Definitions
- Rule 903: Offers or Sales of Securities by the Issuer, a Distributor, Any of their Respective Affiliates, or Any Person Acting on Behalf of Any of the Foregoing: Conditions Relating to Specific Securities
- Rule 904: Offshore Resales
- Rule 905: Resale Limitations

### **Rule 901: General Statement**

The General Statement to Regulation S provides that offers and sales subject to Section 5 include offers and sales that occur within the United States and do not include offers and sales that occur outside the United States. Regulation S defines when an offering of securities outside the U.S. would be deemed to “come to rest abroad” and therefore occurring outside the U.S., so as not to be subject to the securities registration obligations imposed under Section 5 of the 1933 Act.

### **Rule 902: Definitions**

See Exhibit 1 to this Compliance Manual for the definitions that are important to an understanding of regulation S.

**Rule 903: Safe Harbors**

An offer, sale or resale of securities meeting all of the requirements of the applicable Regulation S safe harbor as set forth in Rule 903 is deemed to occur outside the U.S., and accordingly is not subject to the registration requirements under the 1933 Act. Regulation S provides two safe harbors from the 1933 Act's registration requirements: a safe harbor that is applicable to offers and sales by Issuers, distributors and their respective affiliates; and a safe harbor that is applicable to resales of the securities by other parties.

Each safe harbor is subject to two general conditions as follows:

**General Condition 1 - Rule 903(a)(1)**: The offer or sale must occur in an “offshore transaction” (Rule 902(h)).

This means that (i) the offer is not made to a person in the U.S. and (ii) the buyer is (or is reasonably believed by the seller to be) outside the U.S. at the time of the sale, or the sale is made through an established foreign securities exchange, or through the facilities of a designated foreign securities market, and the transaction is not pre-arranged with a U.S. buyer.

**General Condition 2 - Rule 903(a)(2)**: No “directed selling efforts” (Rule 902(c)) may be made in the United States by the Issuer, a distributor, any of their respective affiliates, or any person acting on behalf of any of the foregoing in connection with the transaction.

“Directed selling efforts” means any activity undertaken for the purpose of, or that could be reasonably expected to result in, conditioning the U.S. market for the relevant securities (for example, advertising the offering in a widely circulated publication in the U.S.). Regulation S excludes certain types of advertisements and other activities from the definition of “directed selling efforts.”

Rule 903 also establishes three categories of securities for the purpose of determining whether additional conditions must be met in order to qualify for the Rule 903 safe harbor:

Category 1:

1. the securities are issued by a “foreign Issuer” that reasonably believes (at the commencement of the offering) that there is no “substantial U.S. market interest” (Rule 902(j)) for the securities to be offered or sold;
2. the securities are being offered and sold by a “foreign Issuer” in “overseas directed offerings;”

3. the securities are non-convertible debt securities of a domestic Issuer offered in overseas directed offerings that are denominated in a currency other than U.S. dollars; and
4. the securities backed by the full faith and credit of a foreign government.

As to Category 1, only General Conditions 1 and 2 must be observed.

Category 2:

The following additional conditions apply to securities that are not eligible for Category 1 and that are (a) equity securities of a reporting foreign Issuer or (b) debt securities and non-convertible, non-participating preferred stock of a reporting Issuer or of a non-reporting foreign Issuer. To be treated as a qualified reporting Issuer, the Issuer must have filed all required reports for at least twelve months prior to the offer or sale, or such shorter period during which the Issuer was subject to the reporting obligation. The additional conditions are:

1. offering restrictions (Rule 902(g)) are implemented;
2. the offer or sale, if made prior to the expiration of a 40-day “distribution compliance period” (Rule 902(f)) (i.e., the period during which the restrictions required by the particular category remain in effect), is not made to a U.S. person or for the account or benefit of a U.S. Person (other than a distributor);

The “distribution compliance period” is the 40-day or one-year period (as specified in Regulation S) beginning on the later of (i) the date when the securities are first offered to persons other than distributors in reliance on Regulation S or (ii) the closing date of the offering. During this period, Issuers and investors must observe certain restrictions (including compliance representations and legending of the offered shares) to ensure that the securities have not been purchased with the intent to resell them into the U.S.; and

3. each distributor selling securities to a distributor, a dealer or a person receiving a selling concession, fee or other remuneration in respect of the securities sold, prior to the expiration of a 40-day distribution compliance period (i.e., the period during which the restrictions required by the particular category remain in effect), sends a confirmation or other notice to the purchaser stating that the purchaser is subject to the same restrictions on offers and sales that apply to a distributor.

Category 3:

The following additional conditions apply to securities that are not eligible for Category 1 or 2 – that means offering of all other securities, including (a) equity offerings by domestic reporting Issuers, (b) offerings of equity securities by non-reporting foreign Issuers for which there is a substantial U.S. market interest and (c) offerings by U.S. Issuers that are not reporting Issuers. These offerings are subject to the most stringent conditions, which are:

1. offering restrictions (Rule 902(g)) are implemented;
2. in the case of debt securities:
  - A. the offer or sale, if made prior to the expiration of a 40-day distribution compliance period, is not made to a U.S. person or for the account of a U.S. person (other than a distributor); and
  - B. the securities are represented upon issuance by a temporary global security (certificate) which is not exchangeable for definitive securities until the expiration of the 40-day distribution compliance period and for persons other than distributors, until certification of beneficial ownership of the securities by a non-U.S. person or a U.S. person who purchased securities in a transaction that did not require registration under the 1933 Act;
3. (iii) In the case of equity securities:
  - A. the offer or sale, if made prior to the expiration of a one-year distribution compliance period (or six months distribution compliance period if the Issuer is a reporting Issuer) is not made to a U.S. person or for the account of a U.S. person (other than a distributor); and
  - B. the offer or sale, if made prior to the expiration of a one-year distribution compliance period (or six months distribution compliance period if the Issuer is a reporting Issuer), is made pursuant to the following conditions:
    1. the purchaser certifies that it is not a U.S. person and is not acquiring the securities for the account or benefit of any U.S. person or is a U.S. person who purchased securities in a transaction that did not require registration under the 1933 Act;
    2. the purchaser must agree to resell the securities only in accordance

with Regulation S, pursuant to registration under the 1933 Act or pursuant to an available exemption from registration and further agrees not to engage in hedging transactions with regard to such securities unless in compliance with the 1933 Act;

3. the securities of a domestic Issuer must bear a restrictive legend;
4. the Issuer issues stop transfer instructions.
5. each distributor selling securities to a distributor, dealer or person receiving a selling concession, free or other remuneration is required to send a confirmation of other notice to the purchaser stating that the purchaser is subject to the same restrictions on offers and sales that apply to a distributor.

Rule 903 also addresses debt securities that are fully and unconditionally guaranteed as to principal and interest by the parent of the Issuer and an offer or sale of warrant under Category 2 or 3.

#### **Rule 904. Offshore Resales.**

Rule 904 provides a safe harbor for offers and sales of securities by any person other than the Issuer, a distributor, any of their respective affiliates (except any officer or director who is an affiliate solely by virtue of holding such office), or any person acting on their behalf if:

1. the offer or sale is made in an “offshore transaction” (Rule 902(h));
2. no “directed selling efforts” (Rule 902(c)) are made in the U.S. by the seller, an affiliate, or any person acting on their behalf; and
3. the following conditions, if applicable, are satisfied:
  - (i) in the case of an offer sale prior to the expiration of the distribution compliance period specified in Category 2 or 3 of Rule 903, as applicable, by a dealer, or person receiving a selling concession, fee or other remuneration:
    - A. neither the seller nor the person acting on its behalf knows that the offeree or buyer is a U.S. person; and
    - B. if the seller or person acting on the seller’s behalf knows that the purchaser is a dealer, or is a person receiving a selling concession, fee or other remuneration, the seller or a person acting on the seller’s behalf must send to the purchaser a confirmation or notice stating that the securities may be offered and sold during the distribution compliance period only in accordance with the provisions of Regulation S, pursuant to registration of the securities under the

- 1933 Act or pursuant to an available exemption for the registration requirements; and
- (ii) in the case of an offer or sale by an officer or director of the Issuer or a distributor, who is an affiliate of the Issuer or distributor solely by virtue of holding such position, no selling concession, fee or other remuneration is paid in connection with such offer or sale other than the usual and customary broker's commission that would be received by a person executing such transaction as agent.

**Rule 905: Resale limitations**

Rule 905 provides that equity securities of domestic Issuers acquired from the Issuer, distributor, or any of their respective affiliates in a transaction subject to the safe harbor rules discussed above are deemed to be "restricted securities", and resales by any offshore purchaser must be made pursuant to Regulation S, registration under the 1933 Act or another exemption from 1933 Act registration.

Equity securities placed offshore by U.S. Issuers are deemed "restricted securities" for purposes of Rule 144 under the 1933 Act and, accordingly, are subject to the applicable Rule 144 holding period before they can be resold in the U.S. (absent availability of another exemption for the resale from the registration requirements of Section 5 of the 1933 Act).

Offshore resales under Regulation S of U.S. equity securities that are "restricted securities" under Rule 144 will not "cleanse" those securities' restricted status for Rule 144 resale purposes.

## OFFERINGS OF SECURITIES MADE VIA THE INTERNET TO NON-U.S. INVESTORS

In March 1988, the SEC issued an interpretative release relating to, among other things, whether an offering of securities made via the Internet to non-U.S. investors could be deemed to constitute "directed selling efforts" and an "offer" within the U.S. under Regulation S, thereby rendering the Regulation S exemption unavailable. The release indicates that an Issuer that chooses to effect an offering in such a manner could remain eligible for the Regulation S exemption by, among other things, including prominent statements on the applicable web pages indicating that the offer is directed only outside the U.S., and by implementing meaningful precautionary procedures that are reasonably designed to guard against sales to U.S. persons. The release also states that an Issuer's or underwriter's use of an Internet website to offer securities will not, by itself, prevent bona fide offshore purchasers in a Regulation S offering from

reselling into the U.S. pursuant to registration or an exemption, such as Rule 144A under the 1933 Act, provided that: (1) the purchasers are not part of the selling group; (2) the purchasers are not affiliated with the Issuer or any member of the selling group; and (3) the Issuer's or underwriter's use of the website was not undertaken as part of an arrangement with, or on behalf of, the purchasers.

## **CONSEQUENCES OF A NON-EXEMPT OFFER AND SALE OF SECURITIES**

The consequences of failing to qualify for an exemption from the securities registration requirements are significant and grave. If the Issuer fails to comply with all of the requirements of the particular claimed exemption, the Issuer will not have perfected its claim to the exemption for the subject offering. Unless the Issuer has perfected a claim for another available self-executing exemption, the offering will have been made in violation of the Federal securities laws. In many instances, such non-compliance will give rise to a possible right of rescission by the purchaser. In such event the Issuer, its directors and executive officers, personally, would become the insurers of the deal and guarantee that no matter what happens, the investors would be able to rescind their investment and get back their investment from the Issuer and its directors and executive officers personally. In addition, the Issuer may become the subject of a SEC investigation.

As a practical matter, a lawsuit would only be filed by an investor if the investment lost money.

## **REPORTING ISSUERS**

Issuers who file reports with the SEC are required to report the Regulation S transaction in a quarterly report on Form 10-Q or an annual report on Form 10-K, as applicable.

## **SIZE OF OFFERING; MANNER OF SOLICITATION; SOPHISTICATION OF OFFEREEES**

The Regulation S exemption does not impose a restriction on the size of the offering, the manner of solicitation (as long as no "directed selling efforts" are employed) or the level of sophistication of the offerees.

## INTERACTION WITH REGULATION D

The Note to rule 502(a) of Regulation D states that transactions meeting the requirements of an exemption generally will not be integrated with simultaneous offerings being made outside the United States in compliance with Regulation S (i.e., in a manner that the securities come to rest abroad).

### FRAUD

The Regulation S exemption and its Safe Harbors discussed in this Compliance Manual only apply to exemptions from the securities registration provisions under the Federal securities laws. The Regulation S exemption does not exempt the Issuer or its executive officers and directors from the anti-fraud provisions (or the disclosure requirements) of the Federal securities laws. If the offering memorandum and related documents (collectively the “Offering Memorandum”) distributed to prospective investors in connection with the Regulation S Offering contain any misrepresentation of a material fact or omits to state a material fact necessary to make the statements in the Offering Memorandum, in light of the circumstances in which they were made, not misleading, then the Issuer its executive officers and directors may be personally liable to purchasers of the securities who may sue to rescind the sale or for monetary damages. In connection with assisting the Issuer in the preparation of the Offering Memorandum, legal counsel will specifically rely upon the information the Issuer has provided regarding the Issuer and they will also rely upon the Issuer’s review of the Offering Memorandum to assure that the Offering Memorandum does not contain any misrepresentation or misstatement of a material fact and does not omit to state a material fact necessary to make the statements in the Offering Memorandum, in light of the circumstances in which they were made, not misleading.

### DISTRIBUTION OF THE OFFERING MEMORANDUM

The Issuer must take care to assure that each prospective investor is given a copy of the Offering Memorandum, including all exhibits and any amendments and/or supplements to the Offering Memorandum. The Issuer must also exercise care to review each subscription to verify that the prospective investor has completed all required information. The Issuer will also need to determine how the prospective investor intends to own his/her/its securities, individually or jointly, or through an entity. Additionally, the Issuer will need to get the complete name in which the securities will be held. The Regulation S Offering Memorandum and each certificate evidencing equity securities sold pursuant to Regulation S should bear a restrictive legend. A sample restrictive legend is attached as Exhibit 2 to this Compliance Manual.

## **RESTRICTIONS ON ALTERING OFFERING MEMORANDUM**

The Issuer should never alter the final Offering Memorandum, its exhibits, supplements or underlying documents without first discussing the change with legal counsel. Improperly altering the Offering Memorandum and its ancillary documents could result in the Issuer losing the availability of the exemption, and become subject to substantial liability under the Federal securities laws as discussed above.

## **AMENDING OR SUPPLEMENTING THE OFFERING MEMORANDUM**

If any information set forth in the Offering Memorandum, its exhibits, supplements or underlying documents becomes outdated or changes, or if the Issuer discovers a mistake in the information disclosed in any of such documents, the Issuer should contact its legal counsel immediately so it can evaluate the changed or new information or mistaken disclosure and advise the Issuer whether the changed or new information or mistaken disclosure is material and requires either an amendment or a supplement to the Offering Memorandum or ancillary documents. If legal counsel determines that it is necessary to revise the disclosures, either an amendment or supplement to the Offering Memorandum should be prepared to update or correct the disclosures. Thereafter, the Issuer will need to distribute the amendment or supplement to prospective investors, along with the Offering Memorandum and furnish a copy of the amendment or supplement to the existing investors.

## **INVESTOR INFORMATION**

The Issuer should take care to gather the necessary information from each prospective investor in order to establish that the Issuer has met General Conditions 1 (an “offshore transaction”) and 2 (“no directed selling efforts”). A sample Investor Information Form is attached as Exhibit 3 to this compliance Manual.

## **MAINTAIN A CONTROL LOG**

In connection with the offering of the securities, it is very important that the Issuer keep complete and accurate records regarding each prospective investor to whom it gives the Offering Memorandum and each purchaser of securities. The Issuer should maintain complete and accurate records of the residence and citizenship of each offeree

and purchaser and the country in which the offer or sale was made. Additionally, the Issuer should keep a record of the date on which it reviewed each purchaser's subscription documents, and whether such information provided by each purchaser is complete and/or whether the Issuer needs more information from any purchaser.

To assist the Issuer in maintaining a record of the above information, the Issuer should consecutively number each Offering Memorandum that it printed and distributed to anyone. To further assist the Issuer, the Issuer should use a form of Control Log to record, among other information, the following: the number of the Offering Memorandum; the name of the prospective investor to whom that numbered Offering Memorandum has been given; the country of residence of the prospective investor; the country in which the offer or sale was made to the prospective investor; the date the Issuer reviewed the purchaser's subscription documents and whether such information is complete and/or whether you need further information; whether the prospective investor has subscribed to purchase the securities and whether the Issuer accepted such subscription; and the number of securities subscribed for by such purchaser and the subscription amount paid. A form of a Control Log is attached as exhibit 4 to this Compliance Manual.

Please note that it is very important that the Issuer should not accept a subscription from any investor who has not provided to you a fully completed and executed set of subscription documents.

## RECAP/SUMMARY

### **The Issuer Safe Harbor**

- The Issuer safe harbor is available to Issuers, distributors, their respective affiliates and any person acting on behalf of any of these parties.
- The Issuer safe harbor provisions classify securities into three categories for purposes of determining whether additional conditions must be met in order to qualify an offering as exempt from registration under the Issuer safe harbor.

Each safe harbor is subject to the following two general conditions:

1. The offer or sale must occur in an "offshore transaction" (meaning that (1) the offer is not made to a person in the U.S. and (2) the buyer is (or is reasonably believed by the seller to be) outside the U.S. at the time of the sale, or the sale is made through an established foreign securities exchange, or through the facilities of a designated foreign securities market, and the transaction is not

- pre-arranged with a U.S. buyer); and
2. No “directed selling efforts” may be made in the United States by the Issuer, a distributor, any of their respective affiliates, or any person acting on behalf of any of the foregoing in connection with the transaction. “Directed selling efforts” means any activity undertaken for the purpose of, or that could be reasonably expected to result in, conditioning the U.S. market for the relevant securities (for example, advertising the offering in a widely circulated publication in the U.S.).

Additional conditions are imposed based upon the applicable category, as follows:

Category/Description	Conditions/Requirements
<p><u>Category 1</u></p> <ul style="list-style-type: none"> <li>• Securities issued by a foreign Issuer that reasonably believes that no substantial U.S. market interest exists in the class of securities sold in the offering.</li> <li>• Securities offered and sold in an “overseas directed offering.”</li> <li>• Securities are non-convertible debt securities of a domestic Issuer offered in overseas directed offerings that are denominated in a currency other than U.S. dollars;</li> <li>• Securities backed by full faith and credit of a foreign government.</li> </ul>	<p>Only the two above general conditions must be met (i.e., effected as an “offshore transaction” and no “directed selling efforts”).</p>
<p><u>Category 2</u></p> <ul style="list-style-type: none"> <li>• Equity securities of foreign 1934 Act Reporting Companies; or</li> <li>• Debt securities, and non-convertible, non-participating preferred stock of (i) U.S. and foreign 1934 Act Reporting Companies, and (ii) foreign non-reporting companies.</li> </ul>	<ol style="list-style-type: none"> <li>1. All Category 1 requirements.</li> <li>2. “Offering restrictions” apply.</li> <li>3. No offers or sales may be made to (or for the account of) any U.S. person (other than a distributor) during 40-day distribution compliance period.</li> </ol>

<p><u>Category 3</u>                  Securities not eligible for Category 1 or Category 2, that are:</p> <ul style="list-style-type: none"> <li>• Equity securities of U.S. Exchange Act Reporting Companies; and</li> <li>• Debt and equity securities of U.S. non-reporting companies.</li> </ul>	<p>“Offering restrictions” apply</p> <p><b>debt securities:</b></p> <ol style="list-style-type: none"> <li>1. All Category 1 and Category 2 requirements.</li> <li>2. the securities are evidenced by a temporary global security which is not exchangeable for the definitive securities until end of 40-day distribution compliance period.</li> </ol> <p><b>equity securities:</b></p> <ol style="list-style-type: none"> <li>1. All Category 1 and Category 2 requirements.</li> <li>2. The distribution compliance period is extended to one year.</li> <li>3. Purchaser certifies that it is not (and is not buying for account of) a U.S. person.</li> <li>4. Purchaser agrees to resell the securities only pursuant to registration under the 1933 Act or an exemption therefrom.</li> <li>5. the securities of U.S. Issuers must contain a legend as to the effect that the transfer is prohibited except pursuant to a registration under the 1933 Act or pursuant to an available exemption and restricting hedging transactions involving those securities.</li> <li>6. Issuer is required (by contract or charter document provisions) to refuse to register any transfer that violates Regulation S.</li> </ol>
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## The Resale Safe Harbor

- The resale safe harbor applies to resales by persons other than parties eligible to utilize the Issuer safe harbor.
- To claim the resale harbor, these parties are required to comply with the “offshore transaction” and “no directed selling efforts” requirements discussed above.

In addition, dealers are prohibited from knowingly selling Regulation S securities to U.S. purchasers during the applicable distribution compliance period; where a purchaser is also a dealer, the selling dealer must notify the purchaser that the purchaser is subject to the same resale restrictions as the seller; and the selling concession or other fee payable when the offer or sale is made by certain affiliates is limited to a customary broker’s commission.

## CONCLUSION

Although this Regulation S Compliance Manual may seem lengthy, it should be emphasized that it touches only the highlights of the subjects discussed. The rules that govern the offers and sales of securities made outside the United States are complex, and this Compliance Manual provides only a general overview of some of these rules. Any misstep can subject the Issuer and its directors and officers, individually, to personal liability wherein they will become the guarantor of the investment, regardless of the Issuer’s good faith.

Proceed with extreme caution. The Issuer should contact legal counsel for the slightest question regarding exemption availability, as it is more prudent to err on the side of caution rather than disqualify the offering from an otherwise available exemption.

\* \* \* \* \*

## LEGAL DISCLAIMER

While the information in this Regulation S Offering Compliance Manual is currently accurate, the Federal and various States’ securities laws are subject to frequent amendments and modifications. This Regulation S Offering Compliance Manual is for informational purposes only and is not intended to be a comprehensive summary of every legal aspect of conducting a Regulation S off-shore offering of securities. Rather, this Regulation S Offering Compliance Manual is a general summary of some of the major issues and laws presently facing issuers of securities. This information should not be construed as legal advice or a legal opinion as to a particular situation or application. Further, this Regulation S Offering Compliance Manual does not create an attorney/client relationship between Arnstein & Lehr LLP and any readers or recipients of this Regulation S Offering Compliance Manual. Therefore, if your company is considering an off-shore offering of its securities or faced with a pending legal issue or question regarding an off-shore offering of its securities, we strongly encourage you to contact Arnstein & Lehr LLP to ensure that your company is in compliance with applicable securities laws and regulations.

## EXHIBIT I

### Definitions

The following definitions contained in Rule 902 are important to an understanding of Regulation S.

- “U.S. Person”: For individuals, based largely on residence, rather than nationality. Entities have residence largely based upon where they are formed, with the exception of identifiable branches of entities, which may themselves be treated as the equivalent of separate organizations. Accredited investors can form an offshore entity that will be treated as a non-U.S. Person for this purpose.

Detailed rules govern trusts and estates, and other professional fiduciaries, which are designed to mitigate disadvantages to U.S. professional fiduciaries by ensuring that, subject to certain conditions, offers to them for the account of non-U.S. Persons will not trigger 1933 Act registration, despite the making of an offer to the fiduciary in the United States.

- “Substantial U.S. Market Interest” is present with respect to a class of equity securities if (i) U.S. securities exchanges and NASDAQ in the aggregate constituted the single largest market for such class of securities in the Issuer’s prior fiscal year, or (ii) 20% or more of trading in the class of equity securities during such period occurred in such U.S. markets and less than 55% of trading in such securities took place during that period through the facilities of the securities markets or a single foreign country. Separate Substantial U.S. Market Interest rules apply in the case of debt securities.
- A “foreign Issuer” is a foreign organized entity other than such an entity that has more than 50% of its voting securities being held by U.S. residents and either (i) the business of the company is administered principally in the U.S., (ii) 50% or more of its directors or executive officers are U.S. residents or (iii) more than 50% of its assets are located in the United States.
- “overseas directed offering” means (1) an offering of securities by a foreign Issuer directed into a single country other than the U.S. to residents of that country, in accordance with local law and practices, or (2) offerings by U.S. Issuers of certain types of non-convertible debt securities that are denominated in a non-U.S. currency in a single country overseas.

- “Offering Restrictions”: Offering restrictions require each distributor to agree in writing that all offers and sales of the securities prior to the expiration of the distribution compliance period (A) shall be made only (i) in accordance with the provisions of the applicable safe harbors, (ii) pursuant to registration of the securities under the 1933 Act, or (iii) pursuant to an available exemption from the registration requirements of the Securities Act and (B) for offers and sales of equity securities of domestic Issuers not to engage in certain prohibited hedging transactions prior to the end of the distribution compliance period. The offering restrictions also require that all offering materials and documents (other than press releases) used in connection with offers and sales of the securities prior to the expiration of the distribution compliance period must include statements to the effect that the securities have not been registered under the 1933 Act and may not be offered or sold in the United States or to U.S. Persons (other than distributors) unless the securities are registered under the 1933 Act or an exemption from the registration requirements of the 1933 Act is available, and, in the case of equity offerings by domestic Issuers, statements concerning the hedging prohibition. Such statements should appear (i) on the cover or inside cover page of any prospectus or offering circular used in connection with the offer or sale of the securities, (ii) in the underwriting section of any prospectus or offering circular used in connection with the offer or sale of the securities, and (iii) in any advertisement made or issued by the Issuer, any distributor, any of their respective affiliates, or any person acting on behalf of any of the foregoing. Such statements may appear in a summary form on prospectus cover pages and in advertisements.

Broker-dealers must ensure that they are not unlawfully effecting distributions of Canadian securities in the United States in violation of Regulation S and other U.S. securities law requirements. This may result, for example, from purchases of small cap issues by foreign accounts from the Issuer, a promoter or affiliated entities ostensibly using Regulation S or some other purported exemption for resale into the United States for the purpose of effecting a distribution. Such transactions may be found to violate the registration requirements of the 1933 Act and have severe consequences.

## EXHIBIT 2

### SAMPLE RESTRICTIVE LEGEND

The securities have not been registered under the Securities Act of 1933, as amended (the “1933 Act”), and are being offered pursuant to the exemption afforded by Regulation S promulgated under the 1933 Act solely outside of the United States and solely to non-U.S. persons and in specific reliance upon the representations by each Subscriber that (1) at the time of the offer and sale of the securities to Subscriber, Subscriber was not a U.S. Person as defined in Regulation S, and (2) at the time of the offer and sale of the securities to Subscriber and, as of the date of the execution and delivery of this Subscription Agreement by the Subscriber, the Subscriber was outside of the United States. The securities may not be offered or sold in the United States or to U.S. Persons (as defined in Regulation S) unless the securities are registered under the 1933 Act, or an exemption from the registration requirements of the 1933 Act is available. Hedging transactions in these securities may not be conducted except in compliance with the 1933 Act.

**EXHIBIT 3****REGULATION S SUBSCRIPTION DOCUMENT SUPPLEMENT  
INVESTOR INFORMATION FORM****I. INVESTOR TYPE (Check One)** INDIVIDUAL ESTATE\* Number appointed: \_\_\_\_\_Person or Entity Appointed to Act on Behalf of Investor:  Administrator  Personal Representative  Executor TRUST\* Establishment Date: \_\_\_\_\_Trust Type:  Family  Irrevocable  Living  Revocable  Testamentary

Trustee: \_\_\_\_\_

Beneficiary: \_\_\_\_\_

 POWER OF ATTORNEY\*

Power of Attorney Name: \_\_\_\_\_

 CORPORATION  PARTNERSHIP\*  FINANCIAL ORGANIZATION\* JOINT TENANT INVESTOR\* Number of Tenants: \_\_\_\_\_Marital:  Yes  No  Tenancy (Date: \_\_\_\_\_)Tenancy Class:  Joint Tenants with Right of Survivorship  Tenants in Common  Tenants by Entirety  Community Property Community Property with Right of Survivorship  Unmarried TRANSFER ON DEATH JOINT\*  Appointed Execution Date: \_\_\_\_\_Marital:  Yes  No  Tenancy (Date: \_\_\_\_\_)Tenancy Class:  Joint Tenants with Right of Survivorship  Tenants in Common  Tenants by Entirety  Community Property Community Property with Right of Survivorship  Unmarried

\*ADDITIONAL DOCUMENTATION MAY BE REQUIRED FOR THESE TYPES OF INVESTORS.

**II. INVESTOR CONTACT INFORMATION**

INVESTOR: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_ CITY: \_\_\_\_\_ STATE: \_\_\_\_\_

PROVINCE/COUNTY/REGION/CAN: \_\_\_\_\_ COUNTRY: \_\_\_\_\_ ZIP/POSTAL CODE: \_\_\_\_\_

TELEPHONE NUMBER: (Day) \_\_\_\_\_ (Evening) \_\_\_\_\_ E-MAIL: \_\_\_\_\_

**III. PARTICIPATION INFORMATION**CHECK BOX IF THERE ARE MORE THAN TWO PARTICIPANTS. USE THE PARTICIPANT INFORMATION (SUPPLEMENTAL PAGE 3) TO IDENTIFY ADDITIONAL PARTICIPANTS AND THEIR RESPECTIVE ROLES.

**A. Primary Investor**

NAME: _____		<input type="checkbox"/> Person	<input type="checkbox"/> Entity
DATE OF BIRTH: _____	PARTICIPANT ROLE: _____	<b>NOTE:</b> See page 3 "Participant Information" for the appropriate participant role code.	
MAILING ADDRESS: _____		CITY: _____	STATE: _____
PROVINCE/COUNTY/SUBDIVISION: _____		COUNTRY: _____	ZIP/POSTAL CODE: _____
TELEPHONE NUMBER: (Day) _____	(Evening) _____	E-MAIL: _____	
UNEXPIRED PHOTO GOVERNMENT ID NUMBER: _____	TYPE OF UNEXPIRED PHOTO GOVERNMENT ID: _____		
ISSUANCE DATE: _____	EXPIRATION DATE: _____		
COUNTY OF GOVERNMENT IDENTIFICATION: _____	STATE/PROVINCE SUBDIVISION OF GOVERNMENT IDENTIFICATION: _____		
UNEXPIRED PHOTO GOVERNMENT ID NUMBER: _____	TYPE OF UNEXPIRED PHOTO GOVERNMENT ID: _____		
ISSUANCE DATE: _____	EXPIRATION DATE: _____		

COUNTRY OF GOVERNMENT IDENTIFICATION: \_\_\_\_\_ STATE/PROVINCE SUBDIVISION OF GOVERNMENT IDENTIFICATION: \_\_\_\_\_  
**NOTE:** Unexpired Photo Government Identification should be provided for all nonresidential aliens, along with an IRS Form W-8BEN

CORPORATE/BUSINESS ID NUMBER (IF APPLICABLE): _____	FORMATION DATE OF CORPORATION/BUSINESS: _____
STATE/PROVINCE OF CORPORATION/BUSINESS: _____	COUNTRY OF CORPORATION/BUSINESS: _____

**B. Secondary Investor**

NAME: _____		<input type="checkbox"/> Person	<input type="checkbox"/> Entity
DATE OF BIRTH: _____	PARTICIPANT ROLE: _____	<b>NOTE:</b> See page 3 "Participant Information" for the appropriate participant role code.	
MAILING ADDRESS: _____		CITY: _____	STATE: _____
PROVINCE/COUNTY/SUBDIVISION: _____		COUNTRY: _____	ZIP/POSTAL CODE: _____
TELEPHONE NUMBER: (Day) _____	(Evening) _____	E-MAIL: _____	
UNEXPIRED PHOTO GOVERNMENT ID NUMBER: _____	TYPE OF UNEXPIRED PHOTO GOVERNMENT ID: _____		
ISSUANCE DATE: _____	EXPIRATION DATE: _____		
COUNTY OF GOVERNMENT IDENTIFICATION: _____	STATE/PROVINCE SUBDIVISION OF GOVERNMENT IDENTIFICATION: _____		
UNEXPIRED PHOTO GOVERNMENT ID NUMBER: _____	TYPE OF UNEXPIRED PHOTO GOVERNMENT ID: _____		
ISSUANCE DATE: _____	EXPIRATION DATE: _____		

COUNTRY OF GOVERNMENT IDENTIFICATION: \_\_\_\_\_ STATE/PROVINCE SUBDIVISION OF GOVERNMENT IDENTIFICATION: \_\_\_\_\_  
**NOTE:** Unexpired Photo Government Identification should be provided for all nonresidential aliens, along with an IRS Form W-8BEN

CORPORATE/BUSINESS ID NUMBER (IF APPLICABLE): _____	FORMATION DATE OF CORPORATION/BUSINESS: _____
STATE/PROVINCE OF CORPORATION/BUSINESS: _____	COUNTRY OF CORPORATION/BUSINESS: _____

**IV. ADDITIONAL INFORMATION**

Will you be giving discretion over this investment to another?,  Yes  No

If yes, what is the person's name and relationship to you: \_\_\_\_\_

If an individual has given discretion to another over this investment, has a power of attorney or other form been submitted?  Yes  No

If the investor is established for a trust, corporation, estate, or other entity, has a certificate of trust, corporate resolution, letter of appointment, or other appropriate documentation establishing and delegating authority been submitted?  Yes  No

PLEASE PROVIDE THE NAMES AND ADDRESSES OF YOUR BANKS: \_\_\_\_\_

WHAT IS THE SOURCE OF FUNDS FOR THIS INVESTMENT? \_\_\_\_\_ 2 \_\_\_\_\_

ARE YOU OR ANYONE WITH AN INTEREST IN THIS INVESTMENT EITHER:  
 (1) a senior military, governmental, or political official in a non-U.S. country, or (2) closely associated with an immediate family member of such an official?  Yes  No

If yes, identify the name of the official, office held, and country: \_\_\_\_\_

**V. SIGNATURES**

Please review your information above and the Subscription Agreement in its entirety, and sign below. EACH OF THE UNDERSIGNED REPRESENTS AND WARRANTS THAT THE INFORMATION PROVIDED IN THIS INVESTOR INFORMATION FORM IS TRUE, COMPLETE AND ACCURATE.

PRIMARY INVESTOR'S SIGNATURE: _____	DATE: _____
SECONDARY INVESTOR'S SIGNATURE: _____	DATE: _____

## INVESTOR INFORMATION FORM – Supplemental Participant Information

### Additional Participant

NAME:		<input type="checkbox"/> Person	<input type="checkbox"/> Entity
DATE OF BIRTH:	PARTICIPANT ROLE:	<b>NOTE:</b> See page 3 "Participant Information" for the appropriate participant role code.	
MAILING ADDRESS:		CITY:	STATE:
PROVINCE/COUNTY/SUBDIVISION:		COUNTRY:	ZIP/POSTAL CODE:
TELEPHONE NUMBER: (Day)	(Evening)	E-MAIL:	
UNEXPIRED PHOTO GOVERNMENT ID NUMBER:	TYPE OF UNEXPIRED PHOTO GOVERNMENT ID:		
ISSUANCE DATE:	EXPIRATION DATE:		
COUNTRY OF GOVERNMENT IDENTIFICATION:	STATE/PROVINCE SUBDIVISION OF GOVERNMENT IDENTIFICATION:		
UNEXPIRED PHOTO GOVERNMENT ID NUMBER:	TYPE OF UNEXPIRED PHOTO GOVERNMENT ID:		
ISSUANCE DATE:	EXPIRATION DATE:		
COUNTRY OF GOVERNMENT IDENTIFICATION:	STATE/PROVINCE SUBDIVISION OF GOVERNMENT IDENTIFICATION:		
<b>NOTE:</b> Unexpired Photo Government Identification should be provided for all nonresidential aliens, along with an IRS Form W-8BEN			
CORPORATE/BUSINESS ID NUMBER (IF APPLICABLE):		FORMATION DATE OF CORPORATION/BUSINESS:	
STATE/PROVINCE OF CORPORATION/BUSINESS:		COUNTRY OF CORPORATION/BUSINESS:	

### SIGNATURE (Required only if additional participant is a joint tenant)

Please review your information above and the Subscription Agreement in its entirety, and sign below. THE UNDERSIGNED REPRESENTS AND WARRANTS THAT THE INFORMATION PROVIDED IN THIS INVESTOR INFORMATION FORM IS TRUE, COMPLETE AND ACCURATE.

JOINT TENANT'S SIGNATURE:

DATE:

### Participant Information

The legal address **MUST** be a street address. A post office box is not acceptable for a legal address. A legal address is the person's permanent residence address or, in the case of an entity, the place where it maintains a physical presence. For those investments by nonresident aliens and foreign entities, the legal address must be the same as the permanent residence address listed on IRS Form W-8BEN.

**NOTE:** To help the government fight the funding of terrorism and money laundering activities, Federal law requires certain "financial institutions" to obtain, verify, and record information that identifies each investor. When you invest, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask you to provide a copy of your driver's license or other identifying documents. The information you provide in this form may be used to perform a credit check and verify your identity by using internal sources and third party vendors. If additional space is needed, please attach a separate sheet.

### Participant Roles

The codes below designate the participant role for each participant in the investment.

ADMN Administrator	DRTR Director	LPAR Limited Partner	PATN Power of Attorney
AGNT Agent	EXEC Executor	MNGR Manager	PRM Primary Investors
BENF Beneficiary	GPMM General Partner/Managing Member	MMBR Member	RIND Responsible Individual
BORW Borrower	GRNT Grantor	MINR Minor	SEC Secondary Investors
CONS Conservator	GRDN Guardian	OFCR Officer	STLR Settlor
CUST Custodian	IPTY Interested Party	PTNR Partner	SHLR Shareholder
DECD Deceased	IMGR Investment Manager	PREP Personal Representative	SPSR Sponsor
DPTR Depositor	LHLD Lien Holder	PLAD Plan Administrator	TSTE Trustee

**CONTROL LOG**

ABC, Inc.  
 Offering of \_\_\_ Shares of Common stock  
 Offering Memorandum dated \_\_\_\_\_, 200\_\_

Offering Memorandum #	Name of Prospective Investor	Number of Securities subscribed for (and \$ amount received)	Country of residence of the Prospective Investor	Date that you reviewed the Subscription Book (Indicate whether (a) complete or (b) additional information is needed)	Subscription Accepted (Y/N) Date of Acceptance and # of Securities Purchased
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					



## **About Jerold N. Siegan**

Mr. Siegan, a Partner, has practiced law for more than 20 years. His practice is focused in the securities and corporate law areas. Mr. Siegan has substantial experience representing businesses in public and private securities offerings, as well as general corporate matters. He also represents clients in structuring, negotiating and documenting asset and stock acquisitions and sales, mergers, joint ventures and other business transactions. His clients are located throughout the country. He counsels both publicly and privately held businesses. Mr. Siegan's clients cover a broad range of industry segments, including telecommunications, software, internet service companies, securities broker/dealer firms (i.e., underwriters and placement agents), merchant banking firms and general industrial firms, hedgefunds and real estate financing funds.

## **Professional Activities and Achievements**

Mr. Siegan serves as outside general counsel and special counsel to publicly-held and privately-held businesses. He received the Illinois Secretary of State's Public Service Award for service as a member of its Securities Law Advisory Committee, and he co-authored amendments to the Illinois Securities Law of 1953. He also served as special securities counsel in the landmark case of Standard Oil and Exploration of Delaware, Inc., which approved a new financing technique, developed by Mr. Siegan, for raising capital for companies in Chapter 11 proceedings and resulting in a new public successor company.

## **Recent Publications and Lectures**

Mr. Siegan has spoken on a broad range of topics relating to the securities law area at seminars sponsored by the Chicago Bar Association and Illinois Institute for Continuing Legal Education. He co-authored the chapter entitled "Considerations and Problems in Drafting Limited Partnership Agreement and Certificate," which appeared in the Real Estate Syndications text, published by the Illinois Institute for Continuing Legal Education. He also authored the articles "Legal or Illegal? Public Corporations Going Private," published in the Chicago Daily Law Bulletin;

## **Education**

DePaul University (J.D., Dean's List, 1972)  
University of Illinois (B.A., 1968)

## **Bar admissions**

State of Illinois  
U.S. District Court for the Northern District of Illinois  
U.S. Court of Appeals for the Seventh Circuit  
U.S. District of Columbia Court of Appeals

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## Boca Raton

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Suite 275

Boca Raton, Florida 33432

P 561.962.4145 | F 561.962.4245

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Suite 600

West Palm Beach, Florida 33401

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Fort Lauderdale, Florida 33301

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