

BEFORE THE
MARYLAND SECURITIES COMMISSIONER

IN THE MATTER OF:

EXEMPTION FOR CERTAIN
OFFERS AND SALES OF
SECURITIES TO
ACCREDITED INVESTORS

FILE NO. 99-1132

(2018 Revision)

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ORDER

WHEREAS, the North American Securities Administrators Association adopted the Model Accredited Investor Exemption (“Model Rule”) to assist small issuers raise investment capital; and

WHEREAS, the Model Rule, and similar state accredited investor exemptions, are designed to permit limited forms of general solicitation of accredited investors without triggering the registration requirements of those states’ securities laws; and

WHEREAS, regulations exempting offers of securities involving limited general solicitation of accredited investors similar to the Model Rule, have been adopted formally or informally in a substantial number of the States, and by the U.S. Securities and Exchange Commission (“SEC”) in Regulation D, Rule 504; and

WHEREAS, the Maryland Securities Commissioner (the “Commissioner”) has determined that it is appropriate for Maryland to authorize an exemption that is substantially similar to the Model Rule; and

WHEREAS, the Commissioner has determined that the exemption set forth in this Order is consistent with the public interest and within the purposes fairly intended by the policy and provisions of the Maryland Securities Act, Corporations & Associations Article, Title 11,

Annotated Code of Maryland (1999 Repl. Vol.) (the “Maryland Securities Act”).

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to the authority granted by sections 11-203 and 11-602(17) of the Maryland Securities Act, that an offer or sale of a security by an issuer is exempted from the registration requirements of section 11-501 of the Maryland Securities Act, if the transaction is conducted in accordance with the following provisions:

1. The issuer or a person acting on the issuer’s behalf may sell securities under this Order only to persons who are, or the issuer reasonably believes are, accredited investors. “Accredited investor” has the meaning stated in 17 CFR §230.501(a) (1999) (SEC Rule 501, Definitions and Terms Used in Regulation D).
“Accredited investor” also includes a relative, spouse, or relative of the spouse of an individual described in 17 CFR §230.501(a), who has the same principal residence as the individual.
2. An exemption under this Order is not available if:
 - a) The issuer is in the development stage, and: i) has no specific business plan or purpose; or ii) has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other person.
 - b) The issuer, any of its predecessors, any affiliated issuer, any of the issuer’s directors, officers, general partners, beneficial owners of 10% or more of any class of its equity securities, any of the issuer’s promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter: i)

within the last five years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the SEC; ii) within the last five years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit; iii) is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or iv) is currently subject to any order, judgment or decree of any court of competent jurisdiction entered within the last five years, temporarily, preliminarily or permanently restraining or enjoining the party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of a security.

- c) The disqualifications set forth in section b do not apply if: i) the person subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the disqualifying order, judgment or decree was entered, and the Form BD or Form U-4 filed by the person with the Commissioner discloses the disqualifying event; ii) before the first offer under this Order, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or iii) the issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry,

could not have known that a disqualification existed under this Order.

d) The Commissioner by order may waive a disqualification set forth above if the Commissioner finds that the waiver is consistent with the public interest and within the purposes fairly intended by the policy and provisions of the Maryland Securities Act.

3. The issuer or a person acting on the issuer's behalf shall exercise reasonable care to ensure that each purchaser of the securities in an offering exempt under this Order purchases for investment and not with a view to or for sale in connection with a distribution of the securities. Any resale of a security sold in reliance on this Order within 12 months after the original sale is presumed to be with a view to distribution and not for investment, except a resale: a) pursuant to a registration statement effective under sections 11-503 or 11-504 the Maryland Securities Act, or b) to an accredited investor pursuant to this Order.
4. A general announcement of the proposed offering may be made by any means. The issuer may claim the exemption under this Order if the general announcement of the proposed offering is disseminated to persons who are not accredited investors.
5. Unless additional information specifically is permitted by the Commissioner, the general announcement shall include only the following information: a) the name, address and telephone number of the issuer of the securities; b) the name, a brief description and price (if known) of any security to be issued; c) a brief description of the business of the issuer in 25 words or less; d) the type, number and aggregate

amount of securities being offered; e) the name, address and telephone number of the person to contact for additional information; f) a statement that sales will only be made to accredited investors; g) a statement that no money or other consideration is being solicited or will be accepted by way of this general announcement; and h) a statement that the securities have not been registered with or cleared by any state securities agency or the SEC and are being offered and sold pursuant to an exemption from registration.

6. The issuer, in connection with an offer, may provide information in addition to the general announcement permitted under item 5, if the information is delivered: a) through an electronic database that is restricted to persons who have been pre-qualified as accredited investors; or b) after the issuer reasonably believes that the prospective purchaser is an accredited investor.
7. Unless prior to making a telephone solicitation the issuer reasonably believes the prospective purchaser to be solicited is an accredited investor, the issuer or a person acting on the issuer's behalf may not use telephone solicitation of prospective purchasers.
8. Within 15 days after the first sale of securities in Maryland exempt under this Order, the issuer shall file with the Commissioner the following: a) the Model Accredited Investor Exemption Uniform Notice of Transaction, a copy of which is attached as Exhibit 1 to this Order, or a document containing the information required by that form; b) a Form U-2 (Uniform Consent to Service of Process); c) the date of the first sale in Maryland; d) the names(s) of the broker-dealer(s),

issuer-agent(s), and other persons that are effecting transactions in the securities in Maryland; e) the \$400 fee required by section 11-506 of the Maryland Securities Act; and f) any other information the Commissioner may request.

9. Following receipt of the filing required under this Order, the Division shall notify an issuer that its filing either is accepted or incomplete. The filing is effective in Maryland if: a) the filing is complete; and b) no stop order is in effect and no proceeding is pending under sections 11-603 and 11-701.1 of the Maryland Securities Act. If the filing is incomplete, the Commissioner, before issuing a stop order under sections 11-603 and 11-701.1 of the Maryland Securities Act, shall notify an issuer of the deficiencies in the filing that must be corrected in order to complete the filing. If an issuer cures the deficiencies in its filing, the Commissioner shall notify the issuer that the filing is accepted.

This Order may be modified only by the issuance of a subsequent order or the promulgation of a regulation.

DATE OF THIS ORDER:

January 18, 2000

SO ORDERED:

**Commissioner's Signature on
File w/Original Documents**

Melanie Senter Lubin
Securities Commissioner