

**DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE, SECURITIES AND BANKING**

NOTICE OF FINAL RULEMAKING

The Acting Commissioner of the Department of Insurance, Securities and Banking, pursuant to the authority set forth in Section 403 of the Securities Act of 2000 (Act), effective October 26, 2000 (D.C. Law 13-203, D.C. Official Code § 31-5604.03 (2012 Repl.)), hereby gives notice of his intent to adopt new rules under Section 250 of Chapter 2 (Registration of Securities Offerings) of Title 26 (Insurance, Securities and Banking), Subtitle B (Securities) of the District of Columbia Municipal Regulations (DCMR).

This final rulemaking creates a new Section 250, entitled District of Columbia-Only Securities Offerings Exemption. Section 250 will establish a new exemption from registration for issuers of securities who make securities offerings exclusively to residents of the District of Columbia. This new Section 250 will set forth the eligibility requirements for the exemption, outline conditions that must be met in order to claim the exemption and establish filing requirements, including a fee. The final rulemaking will also amend Section 299 of the Act to provide additional definitions related to the exemption. The Acting Commissioner has determined that this rulemaking is in the public interest, appropriate for the protection of investors, and consistent with the purposes intended by the applicable statutory provisions.

These rules were originally published in the *D.C. Register* as a Notice of Proposed Rulemaking on August 8, 2014 at 61 DCR 008143. Public comments were received for 30 days. The comment period ended on September 6, 2014. After consideration of the two written comments received, no substantive changes have been made to the rulemaking. This rule was adopted as final on September 29, 2014 and will take effect immediately upon publication of this notice in the *D.C. Register*.

Chapter 2, REGISTRATION OF SECURITIES OFFERINGS, of Title 26-B, SECURITIES, of the DCMR is amended as follows:

A new Section 250, DISTRICT OF COLUMBIA-ONLY SECURITIES OFFERINGS EXEMPTION, is added to read as follows:

**250 DISTRICT OF COLUMBIA-ONLY SECURITIES OFFERINGS
EXEMPTION**

250.1 The purpose of this subchapter is to promote and encourage the growth of small business in the District of Columbia by facilitating the ability to raise capital by selling securities to District of Columbia residents. This subchapter will provide an exemption from the requirements of Section 301 of the Securities Act of 2000, D.C. Official Code § 31-5603.01 for issuers who offer such securities exclusively in the District of Columbia. This exemption will be known as the District of Columbia-Only Securities Offerings Exemption.

- 250.2 Pursuant to D.C. Official Code § 31-5604.03, an offer or sale of a security in the District of Columbia that complies with all of the provisions of Section 250 shall be exempt from the requirements of D.C. Official Code § 31-5603.01, § 31-5603.07, and § 31-5604.05 of the Securities Act of 2000, effective October 26, 2000 (D.C. Law 13-203; D.C. Official Code §§ 31-5601.01 *et seq.* (2012 Repl.)) ("Act"), if the offer is conducted in accordance with the following requirements:
- (a) The issuer must be an entity that is organized under the laws of the District of Columbia ("District"), is authorized to do business in the District, and has its principal place of business in the District;
 - (b) The transaction must meet the conditions of the federal exemption for intrastate offerings in Section 3(a)(11) of the Securities Act of 1933 (15 U.S.C. § 77c(a)(11)) and Rule 147 adopted under the Securities Act of 1933 (17 C.F.R. § 230.147); and
 - (c) Unless the purchaser is an accredited investor as defined by § 31-5601.01 of the Act, the issuer shall not accept:
 - (i) From any single purchaser who is a natural person, more than \$10,000, if the purchaser's annual gross income is less than \$100,000;
 - (ii) From any single purchaser who is a natural person, more than \$25,000, if the purchaser's annual gross income is less than \$200,000; or
 - (iii) An offer from any purchaser other than a natural person, unless the purchaser's annual gross income or net worth is more than \$1 million (\$1,000,000).

251 SOLICITATION OR ADVERTISING ADDRESSED TO DISTRICT OF COLUMBIA RESIDENTS ONLY

251.1 A general solicitation or advertising may be published in connection with the offer to sell or sale of the securities, provided, that at least 20 calendar days before any sale of the security, the issuer has filed with the Commissioner a notice setting forth the material terms of the proposed sale and copies of any sales and advertising literature to be used and the Commissioner, by order, does not disallow the exemption within 10 business days after the filing is received by the Commissioner.

252 CASH AND CONSIDERATION LIMITS

- 252.1 The sum of all cash and other lawful consideration to be received for all sales of the securities in reliance on the exemption under this subsection shall not exceed the following amounts:
- (a) \$500,000, if the issuer has financial statements, including balance sheets, income statements and cash flow statement for the past three years, or as much of that time as the issuer has been in operation, that are certified by the principal executive officer to be true and complete in all material respects.
 - (b) \$1,000,000, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance on the exemption under this subsection, if the issuer has undergone a financial review of the financial statements of its most recently completed fiscal year, which complies with generally accepted accounting principles.
 - (c) \$2,000,000, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance on the exemption under this subsection, if the issuer has undergone an audit of the financial statements of its most recently completed fiscal year, which complies with generally accepted accounting principles.
- 252.2 An offer or sale to an officer, director, partner, trustee, or individual occupying similar status or performing similar functions with respect to the issuer or to a person owning 10 percent or more of the outstanding shares of any class or classes of securities of the issuer does not count toward the monetary limitation in subparagraphs 252.1(a), (b), and (c).
- 252.3 No offer or sale of a different class or series of security shall have been made by the issuer in reliance on the exemption under this subsection during the immediately preceding 12-month period.

253 FILING REQUIREMENTS

- 253.1 The issuer or applicant shall file the following documents with the Commissioner no later than 20 calendar days prior to offer or sale of any offering made in reliance on the exemption under this subsection.
- 253.2 A written notice of claim of exemption from registration, specifying that the issuer will be conducting an offering in reliance on the exemption under this subsection, accompanied by the filing fee set forth in Section 249.
- 253.3 A copy of the offering document to be provided to prospective investors in connection with the offering, containing all of the following:

- (a) A description of the company, the type of entity, the address and telephone number of its principal office, its history, its business plan, and the intended use of the offering proceeds, including any amounts to be paid, as compensation or otherwise, to any owner, executive officer, director, managing member, or other person occupying a similar status or performing similar functions on behalf of the issuer;
- (b) The identity of all persons owning more than 10 percent of the ownership interests of any class of securities of the company;
- (c) The identity of the executive officers, directors, managing members, and other persons occupying a similar status or performing similar functions in the name of and on behalf of the issuer, including their titles and their prior experience;
- (d) For persons reported in (a) and (b), each such individual will provide to the Department on a confidential basis, an affidavit in the form of Attachment A, which includes the date of birth, address and social security number of the individual and a statement signed under penalty of perjury that the individual is not disqualified from participating in this offering;
- (e) The terms and conditions of the securities being offered and of any outstanding securities of the company; the amount of securities being offered; either the percentage ownership of the company represented by the offered securities or the valuation of the company implied by the price of the offered securities; the price per share, unit, or interest of the securities being offered; any restrictions on transfer of the securities being offered; and a disclosure of any anticipated future issuance of securities that might dilute the value of securities being offered;
- (f) The identity of any person who has been or will be retained by the issuer to assist the issuer in conducting the offering and sale of the securities, excluding persons acting solely as accountants or attorneys and employees whose primary job responsibilities involve the operating business of the issuer rather than assisting the issuer in raising capital;
- (g) For each person identified as required under subparagraph (ii)(E), a description of the consideration being paid to the person for such assistance. Any such consideration must be paid into a registered bank account;
- (h) A description of any litigation, legal proceedings, or pending regulatory action involving the company or its executive officers;

- (i) Any additional information material to the offering, including, if appropriate, a discussion of significant factors that make the specific offering speculative or risky. This discussion shall be concise and organized logically and may not be limited to risks that could apply to any issuer or any offering under this section. There must be set forth under an appropriate caption, a carefully organized series of short, concise paragraphs, summarizing the most significant factors that make the offering speculative or substantially risky. Issuers should avoid generalized statements and include only factors that are specific to the issuer;
- (j) The issuer's business plan for the next five fiscal years;
- (k) The issuer's financial statements, for the three most recent fiscal years, or for as much time as the issuer has been in existence, if less than three years;
- (l) A statement of the issuer's proposed use of funds to be derived from the offering;
- (m) All sales material that is distributed or made available to potential purchasers during the offering period;
- (n) If any material change occurs in the information that an issuer submits to the Commissioner in a statement filed under subparagraph (ii), the issuer shall, within 5 calendar days of the change, notify the Commissioner and make corresponding changes to the disclosures in the offering document; and
- (o) An escrow agreement with a bank, savings bank, savings and loan association, or credit union chartered under the laws of this district or an agency of the federal government in which all investor funds will be deposited into an interest-bearing account, providing that all offering proceeds, plus accrued interest, will be released to the issuer only when the aggregate capital raised from all investors is equal to or greater than the offering amount specified in the disclosure document, and all the funds so released are used in accordance with the disclosure document, provided, if that target offering amount is not raised by the time stated in the disclosure document, the depository institution shall refund all investor funds raised in the offering, with accrued interest.

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DISQUALIFICATIONS

254.1

An issuer is not eligible for this exemption if, either before or as a result of the offering, an investment company, as defined in Section 3 of the Investment Company Act of 1940 (15 U.S.C. § 80a-3), or an entity that would be an

investment company but for the exclusions provided in Section 3 (c) of the Investment Company Act of 1940 (15 U.S.C. § 80a-3(c)), or subject to the reporting requirements of Section 13 or 15 (d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m or 78o (d)), or a development stage company that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

254.2 Neither the issuer nor any of the officers, shareholders, employees or contractors referred to in this rulemaking would be disqualified from participating in an offering under Regulation A under the Securities Act of 1933, by virtue of 17 C.F.R. Section 230.262, as Section 230.262 may be amended from time to time.

255 **ADDITIONAL REQUIREMENTS FOR ISSUERS**

255.1 An offering document shall be delivered to each offeree at least 24 hours prior to any sale of securities in reliance upon the District of Columbia intrastate exemption. The offering document must:

- (a) Inform all prospective purchasers of securities offered under this subsection that the securities have not been registered under federal or district securities law and that the securities are subject to limitations on resale.
- (b) Shall display the following legend conspicuously on the cover page of the disclosure document:

“IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE ISSUER’S DISCLOSURE STATEMENT, INCLUDING THE TERMS OF THE OFFERING AND THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES REGULATOR OR THE DEPARTMENT OF INSURANCE, SECURITIES AND BANKING OR OTHER REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION (e) OF SEC RULE 147 (17 C.F.R. § 230.147(e)) AS PROMULGATED UNDER THE SECURITIES ACT OF 1933,

AS AMENDED, AND THE APPLICABLE DISTRICT OF COLUMBIA SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.”

- (c) The offering document must be signed by a duly authorized representative of the issuer who by such action shall certify that the issuer has made reasonable efforts to verify the material accuracy and completeness of the information therein contained.

255.2 An issuer shall maintain records of all offers and sales of securities and shall provide ready access to the records to the Department, upon request.

255.3 An issuer of a security, the offer and sale of which is exempt under this section, shall provide, free of charge, an annual report to the issuer's investors and shall file a copy of the report with the Department, for each of the three fiscal years of the issuer, of which the first ends first after the offering is begun. An issuer may satisfy the delivery requirement of this subsection by making the information available on the issuer's website, if the information is made available within 60 days after the end of each fiscal year and remains available until the succeeding annual report is issued. The report shall contain all of the following:

- (a) Compensation received by each director and executive officer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received;
- (b) An analysis by management of the issuer of the business operations and financial condition of the issuer;
- (c) Operating results and financial statement; AND
- (d) A statement of the use of the proceeds of the offering.

255.4 All statements and representations made in filings with the Department by the issuer and the executive officers and more than ten percent (10%) shareholders of the issuer in connection with this offering shall be subject to Section 502 of the Securities Act of 2000, D.C. Official Code § 31-5605.02, and the Department may bring enforcement actions under Sections 602 or 603 of the Act or refer the violations to the US Attorney for the District of Columbia or the Attorney General of the District of Columbia pursuant to Section 604 of the Act. Purchasers of the securities offered under this exemption may bring actions under Section 607 of the Act for violations of the Act or these regulations.

OFFERINGS THROUGH INTERNET SITES

256.1 The following requirements apply to any offer or sale of securities through Internet sites pursuant to the exemption:

- (a) Any person acting as an Internet site operator must be an issuer, broker-dealer licensed in the District, or a Funding Portal that is in compliance with all District, SEC and FINRA requirements, including if it is a Funding Portal, making any required notice filings with the Department of Insurance, Securities and Banking.
- (b) Internet site operators must comply with all District, SEC and FINRA requirements applicable to intrastate offerings through the internet.
- (c) Internet site operators shall maintain records of all offers and sales of securities effected through its Internet site.

SECURITIES REGISTRATION FEES contained in Section 249, are hereby amended by adding a new Subsection 249.13 to read as follows:

249.13 There shall be a nonrefundable filing fee of \$250.00 for every notice of claim of exemption filed under Section 250.

DEFINITIONS contained in Section 299, are hereby amended by adding the following definitions:

Audit shall mean an examination of the financial statements by an independent accountant in accordance with generally accepted auditing standards, as may be modified or supplemented by the Commission, for the purpose of expressing an opinion thereon.

Executive officer means the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function, or any other person who performs similar policy making functions for the issuer. Executive officers of subsidiaries may be deemed executive officers of the issuer if they perform such policy making functions for the issuer.

Financial Review means a limited inquiry and analytical procedure of much narrower scope than an audit, undertaken by a CPA for the purpose of expressing limited assurance that financial statements are presented in accordance with generally accepted accounting principles (“GAAP”).

Funding portal means any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely

pursuant to Section 4(6) of the Securities Act of 1933 (15 U.S.C. § 77d(6)), that does not—

- (A) Offer investment advice or recommendations;
- (B) Solicit purchases, sales, or offers to buy the securities offered or displayed on its website or portal;
- (C) Compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its website or portal;
- (D) Hold, manage, possess, or otherwise handle investor funds or securities; or
- (E) Engage in such other activities as the Securities Exchange Commission, by rule, determines appropriate.”

Principal office means the location of the primary office of a business where the business and financial records are kept and/or where executive level management employees work.