



The Office of Secretary of State

Brian P. Kemp
SECRETARY OF STATE

Vincent R. Russo
General Counsel

NOTICE (SEC-2011-05)

RE: Repeal of Chapter 590-4-5 entitled “Securities Exemptions” Consisting of Rules 590-4-5-.01 to 590-4-5-.04

TO ALL INTERESTED PERSONS AND PARTIES:

Pursuant to the Official Code of Georgia Annotated, O.C.G.A. §§ 10-5-70 and 50-13-4, notice is hereby given that the Commissioner of Securities of the Office of the Georgia Secretary of State, (hereinafter “Commissioner”) proposes to repeal chapter 590-4-5 *Securities Exemptions*, consisting of Rules 590-4-5-01, 590-4-5-.02, 590-4-5-.03, and 590-4-5-.04.

Attached with this notice is an exact copy of each proposed rule to be repealed. The rules are being repealed under the authority of O.C.G.A. §§ 10-5-70 and 10-5-74. The Commissioner finds that the repeal of said rules is necessary and in the public interest because the rules were promulgated under the Georgia Securities Act of 1973, which the General Assembly repealed in its entirety and replaced pursuant to Act 528 during the 2008 legislative session.

The Assistant Commissioner, in accordance with O.C.G.A. § 10-5-70(f), shall consider the repeal of the proposed rules at 11:30 a.m., on November 17, 2011, in Room 810, Suite 802 West Tower at 2 Martin Luther King, Jr. Drive, S.E., Atlanta, Georgia 30334.

Copies of this notice and exact copy of each proposed rule for repeal are available for review on the Securities Divisions’ web page at <http://www.sos.ga.gov/securities>. Interested persons may submit data, views or arguments in writing to the Commissioner. The Commissioner must receive all comments regarding the proposed repeal of the above-referenced Rules from interested persons no later than 5:00 p.m. on November 15, 2011. Written comments must be sent to: Commissioner of Securities, Securities Division, 2 Martin Luther King, Jr. Drive, S.E., 802 West Tower, Atlanta, Georgia 30334. Written comments may be sent via facsimile to (404) 656-0513, or submitted electronically to SECRules@sos.ga.gov. Please reference “SEC-2011-05” on all comments.

For further information, please contact Tom Zagorsky at (404) 463-0344.

This 13th day of October, 2011.

A handwritten signature in blue ink, appearing to read "Vincent Russo", is written over a horizontal line.

Vincent R. Russo
Interim Assistant Commissioner of Securities

590-4-5-.01 Uniform Limited Offering Exemption.

~~(1) Pursuant to Code Section 10-5-10(d) and Code Section 10-5-9(16), transactions involving securities offered or sold in compliance with Rules 501, 502, 503, and 505 of SEC Regulation D, 17 C.F.R. § 230.501 (2004); 17 C.F.R. § 230.502 (2004); 17 C.F.R. § 230.503 (2004); 17 C.F.R. § 230.505 (2004), are exempt from the registration provisions of Code Section 10-5-5, provided the requirements of Code Section 10-5-9(16) and the following conditions and limitations are met:~~

~~(a) No commission, finder's fee, or other remuneration shall be paid or given to any dealer, limited dealer, salesperson, or limited salesperson for soliciting any prospective purchaser in connection with sales of securities in reliance on this exemption unless such dealer, limited dealer, salesperson, or limited salesperson is registered pursuant to Code Section 10-5-3 the extent required by such section;~~

~~(b) No exemption under this Rule shall be available for the securities of any issuer if the issuer or any of its affiliates:~~

~~1. is subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or any order, judgment, or decree of any court of competent jurisdiction, entered within five (5) years prior to commencement of the offering, permanently restraining or enjoining, such person from engaging in, or continuing, any conduct or practice in connection with the offer, purchase, or sale of any security, or involving the making of any false filing with any state;~~

~~2. has been convicted within five (5) years prior to commencement of the offering of any felony or misdemeanor in connection with the purchase or sale of any security or any felony involving fraud or deceit, including but not limited to, forgery, embezzlement, obtaining money under false pretenses, theft by conversion, theft by deception, larceny, or conspiracy to defraud;~~

~~3. is subject to any order, judgment, or decree issued by any state securities administrator, the SEC, the United States Commodities Futures Trading Commission, or the United States Postal Service in which fraud, deceit, or registration violations were found, after notice and opportunity for hearing, if the order was entered within five (5) years prior to the commencement of the offering in reliance upon this exemption; or~~

~~4. is subject to any order barring or suspending membership in any self-regulatory organization registered pursuant to the Securities Exchange Act of 1934, if the order was entered within five (5) years prior to the commencement of the offering in reliance upon this exemption.~~

~~(c) The disqualification referred to in subparagraph (b) above shall not apply:~~

- ~~1. if the issuer, or its affiliate(s), subject to the disqualification is currently registered or licensed to conduct securities-related business in the jurisdiction where the administrative order or judgment was entered against such issuer or affiliate(s);~~
- ~~2. — if the jurisdiction that created the basis for disqualification determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied; or~~
- ~~3. if the Commissioner, in his or her discretion, waives the disqualification.~~

~~(d) Filing requirements.~~

~~1. The issuer shall file with the Commissioner a notice of intention to sell using SEC Form D, 17 C.F.R. § 239.500, or any successor form, to the extent such information is available, no later than fifteen (15) days after the first sale of securities in this State in reliance upon this exemption. Said notice of intention to sell shall be accompanied by the following:~~

~~(i) a nonrefundable filing fee in the amount of \$250.00; and~~

~~(ii) a consent to service of process, executed by the applicant, in the form prescribed by Code Section 10-5-18.~~

~~2. Renewals. In the event the offering is to continue pursuant to this exemption more than twelve (12) months after the date on which the Commissioner issues his or her receipt of filing, then it shall be necessary for the issuer to file a renewal notice prior to the expiration date of the original receipt of filing, containing the following:~~

~~(i) a completed SEC Form D; and~~

~~(ii) a nonrefundable filing fee in the amount of \$100.00.~~

~~3. Additional Information. The applicant shall promptly furnish any additional information requested by the Commissioner, including a copy of any prospectus as defined in Code Section 10-5-2 and Rule 590-4-3-.02 to be used in connection with the offer and sale of securities to unaccredited purchasers pursuant to this exemption. A final report is not required unless specifically requested by the Commissioner. If more than one notice is required to be filed pursuant to the above paragraphs, notices other than the original notice need only report the information required by SEC Form D, Part C, and any material change in the facts from those set forth in Parts A and B of SEC Form D.~~

~~4. The Commissioner shall notify the applicant of a deficient filing. This notification shall serve as a notice of noncompliance, and, if the deficiencies are not corrected within sixty (60) days, the filing may be deemed abandoned without further notice to the applicant.~~

~~(e) Unless otherwise indicated in this Rule or in conflict with the requirements of Code Section 10-5-9(16), the standards, definitions, and conditions imposed by Rules 501, 502, 503, and 505 of SEC Regulation D shall be applicable to offers and sales made in this State.~~

~~(f) This exemption shall not apply to those transactions offered and sold in reliance upon Rules 504 and 506 of SEC Regulation D, 17 C.F.R. §§ 230.504 & 230.506 (2004).~~

~~(g) The aggregate number of unaccredited purchasers to whom securities are sold under this exemption and Code Section 10-5-9(13) shall not exceed thirty five (35) purchasers in this State during any twelve (12) month period, exclusive of purchasers acquiring securities registered pursuant to Code Section 10-5-5.~~

~~(2) The commissioner may issue a stop order suspending the offer or sale of a federal covered security in this State if the issuer fails to comply with the filing requirements listed in subsection (1) of this Rule.~~

~~(3) Filings required by this Rule may be made electronically, provided the Commissioner has established policies and procedures for an electronic filing system.~~

~~(4) The exemption authorized by this Rule shall be known and may be cited as the "Uniform Limited Offering Exemption."~~

~~(5) Nothing in this exemption is intended to, or should, be construed as relieving, in any way, issuers, or persons acting on behalf of issuers, from the anti-fraud provisions of Code Section 10-5-12.~~

~~Authority O.C.G.A. Secs. 10-5-9, 10-5-10.~~

590-4-5-.02 SEC Coordinated Filing Exemption.

~~(1) Pursuant to Code Section 10-5-9(5), transactions in securities pursuant to a registration statement effective under the Securities Act of 1933, as now or hereinafter amended, or of securities exempt from the registration requirements of the Securities Act of 1933 pursuant to regulations A, B, E, or F adopted under section 3(b) or 3(c) thereof, are exempt from the registration provisions of Code Section 10-5-5, provided the requirements of Code Section 10-5-9(5) and the following conditions and limitations are met:~~

~~(a) No commission, finder's fee, or other remuneration shall be paid or given to any dealer, limited dealer, salesperson, or limited salesperson for soliciting any prospective purchaser in connection with sales of securities in reliance on this exemption unless such dealer, limited dealer, salesperson, or limited salesperson is registered pursuant to Code Section 10-5-3 to the extent required by such section.~~

~~(b) Filings required to be received by the Commissioner prior to sale:~~

~~1. The issuer, any person on whose behalf the offering is to be made, a dealer, or limited dealer registered under the Act, or any duly authorized agent of any such person, shall file a notice of intention to sell on Georgia Form U-1 setting forth the name and address of the applicant, the name and address of the issuer, the title of the securities to be offered in this State, the name, address, and telephone number of the person to whom communications regarding the offering should be directed, and such other information required to identify the issuer and the offering.~~

~~2. A nonrefundable filing fee in the amount of \$250.00.~~

~~3. A consent to service of process, executed by the person who executed the notice of intention to sell, unless such person has previously filed with the Commissioner an irrevocable consent to service of process in the form prescribed by Code Section 10-5-18.~~

~~4. A copy of the initial registration statement (excluding exhibits) or the notification on form 1-A, 1-B, 1-E, or 1-F (or any form substituted therefore) and the related offering circular or offering sheet filed with the SEC. No item listed in this subsection (b)(iv) is required to be filed with the Commissioner if the item is available on the EDGAR Database maintained by the SEC.~~

~~(c) Receipt of Compliance. If the filing requirements of this exemption are met, the Commissioner shall issue to the person who executed the notice of intention to sell, a receipt that shall be valid for fourteen (14) months from the date of its issuance. The receipt is conditional upon compliance with the appropriate registration requirements of the Securities Act of 1933.~~

~~(d) Renewals. In the event the offering is to continue pursuant to this exemption more than fourteen (14) months after the date on which the Commissioner issued the receipt of compliance, then it shall be necessary for the issuer to file a renewal notice prior to the expiration date of the original receipt, containing a notice of intention to sell, a nonrefundable filing fee in the~~

amount of \$100.00, and such other information required to update the registration statement and offering materials.

~~(e) Deficient Filings. In the event of a deficient filing, the Commissioner shall issue to the person who executed the notice of intention to sell, a deficiency letter that shall serve as notice of noncompliance, and, if the deficiencies are not corrected within sixty (60) days, the deficient filing will be deemed abandoned without further notice to the applicant.~~

~~(f) Additional information. The person who executed the notice of intention to sell shall promptly furnish any additional information requested by the Commissioner.~~

~~(g) This exemption is predicated upon effectiveness under the appropriate provisions of the Securities Act of 1933. Advertisements and sales literature filed and accepted by the SEC and the NASD are not required to be filed with the Commissioner.~~

~~(2) By order, the Commissioner is authorized to designate the EDGAR Database, which the SEC maintains, as the Commissioner's depository for all materials referenced in this Rule.~~

~~(3) Filings required by the Act and this Rule may be made electronically, provided the Commissioner has established policies and procedures for an electronic filing system.~~

~~(4) The exemption authorized by this Rule shall be known, and may be cited, as the "SEC Coordinated Filing Exemption."~~

~~(5) Nothing in this exemption is intended to, or should, be construed as relieving, in any way, issuers, or persons acting on behalf of issuers, from the anti-fraud provisions of Code Section 10-5-12.~~

~~Authority O.C.G.A. Secs. 10-5-9, 10-5-10.~~

~~590-4-5-.03 Limited Compensatory Benefit Plan Exemption.~~

~~(1) Pursuant to Code Sections 10-5-10(d) and 10-5-9(16), transactions involving securities offered and sold in compliance with Rule 701, adopted under subsection 3(b) of the Securities Act of 1933, 17 C.F.R. § 230.701 (2004), are exempt from the registration provisions of Code Section 10-5-5, provided the following conditions and limitations are met:~~

~~(a) For purpose of this Rule, a compensatory benefit plan means any purchase, saving, option, bonus, stock appreciation, profit sharing, thrift, incentive, pension, or similar plan.~~

~~(b) No exemption under this Rule shall be available for the securities of any issuer if the issuer or any of its predecessors or affiliates:~~

~~1. is subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment, or decree of any court of competent jurisdiction, entered within five (5) years prior to commencement of the offering, permanently restraining or enjoining, such person from engaging in, or continuing, any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state;~~

~~2. has been convicted within five (5) years prior to commencement of the offering of any felony or misdemeanor in connection with the purchase or sale of any security or any felony involving fraud or deceit, including but not limited to, forgery, embezzlement, obtaining money under false pretenses, theft by conversion, theft by deception, larceny, or conspiracy to defraud;~~

~~3. is subject to any order, judgment, or decree issued by any state securities administrator, the SEC, the United States Commodities Futures Trading Commission, or the United States Postal Service in which fraud, deceit, or registration violations were found, after notice and opportunity for hearing, if the order was entered within five (5) years prior to the commencement of the offering in reliance upon this exemption; or~~

~~4. is subject to any order barring or suspending membership in any self-regulatory organization registered pursuant to the Securities Exchange Act of 1934, if the order was entered within five (5) years prior to the commencement of the offering in reliance upon this exemption.~~

~~(c) The disqualification referred to in subparagraph (b) above shall not apply:~~

~~1. if the issuer, or its affiliate(s), subject to the disqualification is currently registered to conduct securities-related business in the jurisdiction where the administrative order or judgment was entered against such issuer or affiliate(s);~~

~~2. if the jurisdiction that created the basis for disqualification determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied; or~~

~~3. if the Commissioner, in his or her discretion, waives the disqualification.~~

~~(d) Any issuer, or its predecessor or affiliate(s), claiming an exemption under this Rule, shall promptly furnish any information, documents, or materials requested by the Commissioner.~~

~~(e) Unless otherwise indicated in this Rule or in conflict with the requirements of Code Section 10-5-9(16), the standards, definitions, and conditions imposed by 17 C.F.R. § 230.701 shall be applicable to offers and sales made in this State.~~

~~(f) In view of the primary purpose of this Rule, which is to provide an exemption from the registration requirements for securities issued in compensatory circumstances to an issuer's employees, directors, general partners, trustees (where the issuer is a business trust), officers, or consultants and advisers, and their family members, this Rule is not available for plans or schemes to circumvent this purpose, such as to raise capital. In such cases, registration or some other exemption from registration under Code Section 10-5-1, et seq. is required.~~

~~(2) Any documents requested pursuant to this Rule may be filed electronically, provided the Commissioner has established policies and procedures for an electronic submission or filing system.~~

~~(3) The exemption authorized by this Rule shall be known, and may be cited, as the "Limited Compensatory Benefit Plan Exemption."~~

~~(4) Nothing in this exemption is intended to, or should, be construed as relieving, in any way, issuers, or persons acting on behalf of issuers, from the anti fraud provisions of Code Section 10-5-12.~~

~~Authority O.C.G.A. Secs. 10-5-9, 10-5-10.~~

~~590-4-5-.04 SEC Rule 506 Exemption.~~

~~Pursuant to Code Sections 10-5-10(d) and 10-5-5(g)(2), transactions involving securities offered or sold in compliance with Rules 501, 502, 503, and 506 of SEC Regulation D, 17 C.F.R. § 230.501 (2004); 17 C.F.R. § 230.502 (2004); 17 C.F.R. § 230.503 (2004); 17 C.F.R. § 230.506 (2004), are exempt from the registration provisions of Code Section 10-5-5, provided the requirements of Code Section 10-5-5(g)(2) and the following conditions and limitations are met:~~

~~(1) Filing requirements.~~

~~(a) The issuer shall file with the Commissioner a notice of intention to sell using SEC Form D, or any successor form, to the extent such information is available, no later than fifteen (15) days after the first sale of securities in this State in reliance upon this exemption. This notice of intention to sell shall be accompanied by the following:~~

~~1. a nonrefundable filing fee in the amount of \$250; and~~

~~2. a consent to service of process, executed by the applicant, in the form prescribed by Code Section 10-5-18.~~

~~(b) Renewals. In the event the offering is to continue pursuant to this exemption more than twelve (12) months after the date on which the Commissioner issues his or her receipt of filing, then it shall be necessary for the issuer to file a renewal notice prior to the expiration date of the original receipt for filing, containing the following:~~

~~1. a completed SEC Form D; and~~

~~2. a nonrefundable filing fee in the amount of \$100.00.~~

~~(c) Additional Information. The applicant shall promptly furnish any additional SEC filed information requested by the Commissioner. A final report is not required unless specifically requested by the Commissioner.~~

~~(d) Any notice or amendment to SEC Form D required by this section shall be signed by a person authorized by the issuer.~~

~~(e) If more than one notice is required to be filed pursuant to the above paragraphs, notices other than the original notice need only report the information required by SEC Form D, Part C, and any material change in the facts from those set forth in Parts A and B of SEC Form D.~~

~~(f) Any filing pursuant to this exemption shall be amended by filing with the Commissioner such information and changes as may be necessary to correct any material misstatement or omission in the filing. There shall be no fees charged for amendments to filings pursuant to this Rule.~~

~~(g) The Commissioner shall notify the applicant of a deficient filing. This notification shall serve as a notice of noncompliance, and, if the deficiencies are not corrected within sixty (60) days, the filing may be deemed abandoned without further notice to the applicant.~~

~~(2) The commissioner may issue a stop order suspending the offer or sale of a federal covered security in this State if the issuer fails to comply with the filing requirements listed in subsection (1) of this Rule.~~

~~(3) Filings required by this Rule may be made electronically, provided the Commissioner has established policies and procedures for an electronic filing system.~~

~~(4) The exemption authorized by this Rule shall be known, and may be cited, as the "Rule 506 Limited Offering Exemption."~~

~~(5) Nothing in this exemption is intended to, or should, be construed as relieving, in any way, issuers, or persons acting on behalf of issuers, from the anti-fraud provisions of Code Section 10-5-12.~~

~~Authority O.C.G.A. Secs. 10-5-5, 10-5-10.~~