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## Summary of Blue Sky Exemptions Corresponding to Regulation D

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# SUMMARY OF BLUE SKY EXEMPTIONS CORRESPONDING TO REGULATION D

by

*A. Michael Hainsfurther\**

THE federal exemption from registration provided by Regulation D, Rules 501-506,<sup>1</sup> provides the frame of reference for this Article and the accompanying chart. In using the chart the following assumptions should be made: (1) offers and sales will be made in accordance with the general requirements of Regulation D, and the disclosure requirements of Regulation D will be complied with; (2) if the disqualifications listed in Rule 505(b)(2)(iii) of Regulation D<sup>2</sup> (the so-called "bad boy" provision) were applied to the issuer or its affiliates, or if the comparable provisions of each state were applied to the issuer or its affiliates, the issuer would not be disqualified; and (3) commissions will be paid, and the commissions or other remuneration, if any, will be paid only to broker/dealers registered in the respective states. The "bad boy" provisions of each state generally coincide with those contained in Rule 505 of Regulation D; however, if the issuer or any person involved with the offering has ever had any administrative or criminal problems involving the offer or sale of securities, the provision of each state involved in the proposed offering should be carefully examined. The foregoing assumptions were made so that the accompanying chart would be of a manageable size.

An affirmative answer under "Limited Offering Exemption" signifies that the state has an exemption for which a Regulation D offering could comply. The chart reflects that an offering made pursuant to Rules 504,<sup>3</sup> 505,<sup>4</sup> or 506,<sup>5</sup> of Regulation D could qualify for the exemption unless the rule is listed on the chart with an "N" next to it. The fact that a Regulation D offering could qualify for the exemption does not mean that it does

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This Article and the accompanying chart attempt to provide only a summary of an area of securities law that is constantly changing. They are intended solely as a starting point and are not a substitute for an examination of the summarized requirements. The following information is current through August 1, 1984.

1. Regulation D, 17 C.F.R. §§ 230.501-.506 (1983).
2. *Id.* § 230.505(b)(2)(iii).
3. *Id.* § 230.504.
4. *Id.* § 230.505.
5. *Id.* § 230.506.

so automatically. Most states have additional requirements that must be met, and the major requirements are highlighted in the narrative to the extent that they are not reflected in the chart.

Any response other than "no" under "Filings Before Offers or Sales" means that a filing is required at least one of those times. The time period for such filings is listed in days. If a filing is required before offers, an "F" is listed, and if a filing is required before sales, an "S" is listed. For example, 5F means a filing must be made at least five days prior to offers. An "F" with no days means that the filing must be made prior to offers, and correspondingly, an "S" with no days means that a filing must be made prior to sales. When "business days" are referred to by the jurisdiction a "(b)" is listed.

An affirmative response under "Filing After Sale or Completion" means that a filing is required either after a sale, after completion of the offering, or both. The time period is listed in days except when a requirement is given in months, in which case an "m" appears. For example, a six-month update filing would be reflected as "6m." When a filing is required after a sale, an "S" is listed, and if a filing is required after completion, a "C" is listed. When the requirements of the state do not fit into the categories described above, a further explanation is provided in the narrative.

An affirmative response under "Form D" means that a Form D must be filed in the state. An affirmative response together with a "plus" occurs when the state does not have a specific form that must be filed, but does require more than a Form D to be filed. An affirmative response under "Memo" means that a copy of the offering memorandum is required to be submitted and also may mean that all information provided to prospective purchasers is required to be submitted. An affirmative response under "Legend" means that the state has a statutory or regulatory reference suggesting or requiring a legend.

An affirmative response under "Isolated Transaction" means that an exemption is available in that state that does not have any requirements other than a limitation on the number of transactions (except as otherwise discussed in the narrative). The isolated transaction exemption, as used in the chart, is a different concept from the exemption for a transaction not involving any public offering.<sup>6</sup> The issuer should be aware that several states having an isolated transaction exemption do not look solely at the transactions within their state, but instead examine the entire offering to determine if the total number of offers and sales made in all states can be viewed as constituting an isolated transaction.

An affirmative response under "Discl." means that certain disclosure is required or suggested other than that specified by Regulation D. A response of "Reg. D" means that the exemption requires the same disclosure as Regulation D. Even when no disclosure is specified as part of the exemption, the antifraud rules of the state will still be applicable. An affirm-

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6. See accompanying chart.

ative response under "Suitability Standards" means that suitability requirements exist that differ from those established by Regulation D. A response of "Reg. D" means the exemption requires that the suitability standards of Regulation D be imposed.

### I. NARRATIVE DISCUSSION BY STATE

The purpose of the following narrative is to highlight the requirements that are not listed in the chart or that require further explanation.

#### *Alabama*

In order for the exemption described in the chart to be available, no commissions or other remuneration for soliciting any purchaser may be paid except to broker/dealers registered in the state.<sup>7</sup> For offerings made pursuant to Rule 504 of Regulation D, the issuer may be able to utilize a statutory exemption that is provided if no commissions will be paid.<sup>8</sup>

#### *Alaska*

No exemption is available if commissions are to be paid and if an interstate offering is involved.<sup>9</sup> A modified registration process, however, is available and is fully detailed in the rules. In order for such modified registration process to be available, all sales must be made by registered broker/dealers and salespeople or persons who are exempt from such registration.<sup>10</sup>

#### *Arizona*

For offerings exempt from federal registration requirements pursuant to Rule 505 of Regulation D, no more than \$300,000 of the units may be sold to nonaccredited investors within Arizona that the issuer does not reasonably believe immediately prior to making any sale have, either alone or with their purchaser representative, such knowledge and experience in financial and business matters that they are capable of evaluating the merits and risks of the prospective investment.<sup>11</sup> Additionally, for offerings exempt pursuant to Rule 505 of Regulation D, the issuer must undertake to furnish certain information to the Arizona Commissioner upon request,<sup>12</sup> and no commissions or other remuneration may be paid except to bro-

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7. ALA. SEC. COMM'N R. 830-X-6.11(1)(a)(1), *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶ 7471, at 3416 (1982).

8. ALA. CODE § 8-6-11(a)(9), *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶ 7111, at 3113 (1979).

9. ALASKA STAT. § 45.55.140(b)(5), *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶ 8134, at 4114 (1980).

10. ALASKA ADMIN. CODE tit. 3, § 3 AAC 08.500-.506, *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶¶ 8448-8450A (1984).

11. ARIZ. ADMIN. COMP. R. 14-4-126(E)(2)(d), *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶ 9536, at 5411-5 (1982).

12. ARIZ. ADMIN. COMP. R. 14-4-126(D)(4), *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶ 9536, at 5411-4 (1982).

ker/dealers registered in the state.<sup>13</sup> For offerings made pursuant to Rule 504 of Regulation D, the issuer may be relegated to a statutory exemption for nonpublic offerings.<sup>14</sup> The statutory exemption is probably inapplicable to offerings made pursuant to Rule 504 of Regulation D, since the regulations do not include such offerings. If an issuer intends to rely upon both Rule 505 and Rule 506 of Regulation D, the issuer should include a letter of explanation with its filing because the Arizona Securities Commissioner takes the position that the exemptions in Arizona corresponding to each rule are mutually exclusive unless representations are made that the requirements of both will be satisfied.

### *Arkansas*

In order for the exemption described in the chart to be available, all sales must be made by broker/dealers registered in the state.<sup>15</sup> A proof of exemption, together with other items, must be filed prior to offers with copies of all Form Ds filed with the Securities and Exchange Commission.<sup>16</sup> Detailed guidelines for disclosure documents exist<sup>17</sup> and include, but are not limited to, sworn-to financial statements of individual general partners.<sup>18</sup> For a period of two years after the consummation of the sale, the issuer must notify the Arkansas Commissioner of each transfer of ownership.<sup>19</sup> Each issuer must also furnish a list of purchasers within fifteen days after the expiration of the twelve-month period of the offering, unless such list is requested sooner by the Arkansas Commissioner of Securities.<sup>20</sup> Separate requirements exist for offerings of oil and gas interests.<sup>21</sup>

### *California*

If a filing of Notice of Sale is not timely made, the availability of the exemption is not affected; however, the filing fee is increased.<sup>22</sup> The accredited investor concept adopted by California has more requirements

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13. ARIZ. ADMIN. COMP. R. 14-4-126(E)(2)(b), *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶ 9536, at 5411-5 (1982).

14. ARIZ. REV. STAT. ANN. §§ 44-1844(1), *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶ 9136, at 5106 (1984).

15. ARK. STAT. ANN. § 67-1248(b)(14)(iv), *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶ 10,114, at 6117 (1983).

16. Ark. Admin. Reg. R. 14(b)(14)(A), *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶ 10,512, at 6451.

17. Ark. Admin. Reg. R. 40, *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶¶ 10,571 & 10,572.

18. Ark. Admin. Reg. R. 40(E)(25)(c), *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶ 10,572, at 6473.

19. Ark. Admin. Reg. R. 14(b)(14)(B)(7), *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶ 10,512, at 6451-3.

20. ARK. STAT. ANN. § 67-1248(b)(14), *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶ 10,114, at 6117 (1983); *see* Ark. Admin. Reg. R. 14(b)(14)(B)(2), *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶ 10,512, at 6451-3.

21. Ark. Admin. Reg. R. 14(b)(15)(3), *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶ 10,512, at 6455.

22. CAL. CORP. CODE § 25102(f)(4), *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶ 11,133, at 7303 (1968).

than that of Regulation D,<sup>23</sup> and since the California exemption is predicated upon there being no more than thirty-five investors anywhere (excluding accredited investors), these requirements apply to all accredited investors irrespective of the state in which they reside.<sup>24</sup> The filing fees in California vary depending upon the amount of the offering; however, the fees are based upon the total amount of the offering irrespective of the amount offered in California.<sup>25</sup>

### *Colorado*

In addition to the exemption portrayed in the chart for offers or sales of securities not involving an intrastate offering, an exemption exists for any transaction within the state not involving a public offering.<sup>26</sup> The timely filing of a Notice of Sale is not a condition to the exemption portrayed in the chart; however, the filing fee will be increased for late filings.<sup>27</sup>

### *Connecticut*

The disclosure requirements are not exactly the same as Regulation D, but are a close approximation.<sup>28</sup> The Form D notice must be accompanied by an undertaking by the issuer to furnish to the Connecticut Banking Commission, upon written request, certain information furnished by the issuer to purchasers.<sup>29</sup> Failure to file the required notices will not in and of itself constitute grounds for the denial of an exemption.<sup>30</sup> Commissions may not exceed fifteen percent of the initial offering price unless a statement itemizing such commissions is provided to the Connecticut Banking Commission and to each purchaser prior to the sale to such purchaser.<sup>31</sup> The policy of the Connecticut Banking Commission is to require as a condition to the exemption that commissions be paid only to broker/dealers registered in the state. For offerings made pursuant to Rule 504 of Regulation D, the issuer will be relegated to a statutory exemption without the

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23. CAL. ADMIN. CODE tit. 10, R. 260.102.13, *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶ 11,780B (1982).

24. CAL. CORP. CODE § 25102(f)(1), *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶ 11,133, at 7310 (1984).

25. Cal. Comm'n Corp. Release No. 73-C[A], Sept. 20, 1983, *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶ 12,565 (1983).

26. COLO. REV. STAT. § 11-51-113(2)(i), *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶ 13,113, at 9111 (1984); *see* Admin. Order Colo. Div. Sec., Admin. Order of Dec. 31, 1974, *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶ 13,554 (1974).

27. COLO. REV. STAT. § 11-51-107(3), *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶ 13,107, at 9105 (1984).

28. CONN. AGENCIES REGS. § 36-500-22(b)(9)(C)(iii), *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶ 14,422, at 10,415 (1983).

29. CONN. AGENCIES REGS. § 36-500-22(b)(9)(C)(vii)(aa), *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶ 14,422, at 10,416 (1983).

30. CONN. AGENCIES REGS. § 36-500-22(b)(9)(C)(vi), *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶ 14,422, at 10,416 (1983).

31. CONN. AGENCIES REGS. § 36-500-22(b)(9)(C)(i), *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶ 14,422, at 10,415 (1983).

added comfort of compliance with a rule.<sup>32</sup> An argument that the statutory exemption applies to offerings made pursuant to Rule 504 of Regulation D would likely fail since the regulations do not include such offerings and since the Connecticut Banking Commission takes the position that the statutory exemption is not available for such offerings. For a real estate offering in which the property is located within Connecticut or the partnership making the offering is formed in Connecticut, a separate body of law governs.<sup>33</sup>

#### *Delaware*

No fee need be paid in connection with the filings for the exemption corresponding to Regulation D. In order to obtain a written ruling as to the existence of the exemption in a particular situation, however, a fee in the amount of twenty dollars must be paid, and copies of the offering material must be submitted.<sup>34</sup>

#### *District of Columbia*

Requirements exist for broker/dealers but not for issuers.

#### *Florida*

In order for the exemption described in the chart to be available, no person defined as a broker/dealer may be paid a commission or other remuneration for soliciting any purchaser unless such person is a broker/dealer registered in the state.<sup>35</sup> No legend is required, but when five or more purchasers are in the state, a rescission right exists, and the time period for such rescission right does not begin to run until notice of such right is communicated to the purchaser to whom the right relates.<sup>36</sup> One way to provide this notice is through a legend. Providing such notice in a subscription agreement that contains an acknowledgement by each Florida purchaser of the communication of such notice may, however, be useful. Disclosure requirements are provided, but the title of the rule refers to the disclosures as requirements, while the first paragraph of the rule states that no presumptions shall be raised regarding the availability of the exemption when all the conditions are not met.<sup>37</sup>

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32. CONN. GEN. STAT. § 36-490(b)(9), *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶ 14,121, at 10,116 (1984).

33. Letter from Director, Conn. Dept. of Consumer Protection, Real Estate Div., Mar. 27, 1984, *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶ 14,505 (Mar. 27, 1984).

34. Del. Sec. Comm'n R. 9(d), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 15,419C (1983).

35. Fla. Stat. § 517.061(12)(a)(4), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 17,106, at 13,106 (1984).

36. FLA. STAT. § 517.061(12)(a)(5), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 17,106, at 13,106 (1984).

37. FLA. ADMIN. CODE R. 3E-500.05, *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 17,445 (1983).

*Georgia*

In order for the exemption described in the chart to be available, no person defined as a broker/dealer may be paid a commission or other remuneration for soliciting any purchaser unless such person is a broker/dealer registered in the state.<sup>38</sup> An application for renewal must be filed if the offering is not completed within twelve months after the certificate of exemption is issued.<sup>39</sup> An unqualified isolated transaction exemption does not exist. An exemption does exist, however, when sales are made to not more than fifteen Georgia purchasers. The certificates must be marked to indicate the restrictions on transfer and each purchaser must have executed a statement to the effect that the securities have been purchased for investment. A filing is not required.<sup>40</sup> For offerings made pursuant to Rule 504 of Regulation D, a limited offering registration process is available.<sup>41</sup>

*Hawaii*

No specific statutes or regulations adopt a Regulation D type exemption. However, a letter issued by the Corporation and Securities Administrator of Hawaii on March 15, 1983, states that he recognizes exemptions under Rule 506 of Regulation D in Hawaii.<sup>42</sup> The office of the Corporation and Securities Administration informally requests that a Form D be filed at the time one is filed with the Federal Securities Commission. For offerings made pursuant to Rules 504 or 505 of Regulation D, the issuer may be relegated to a statutory exemption for offerings not involving any public offering without the added comfort of compliance with a rule.<sup>43</sup> Winning an argument that the statutory exemption applies to offerings made pursuant to Rule 504 or Rule 505 of Regulation D is unlikely since the letter recognizing Regulation D offerings does not include such offerings.

*Idaho*

In order for the exemption described in the chart to be available, no commissions or other remuneration for soliciting any purchaser may be paid except to broker/dealers registered in the state. A special registration process, however, is provided for broker/dealers.<sup>44</sup> To obtain the exemp-

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38. GA. ADMIN. COMP. ch. 590-4-5, R. 590-4-5-.01(a), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 18,441, at 14,419 (1984).

39. GA. ADMIN. COMP. ch. 590-4-5, R. 590-4-5-.01(d)(2), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 18,441, at 14,420 (1984).

40. GA. CODE § 10-5-9(13), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 18,109, at 14,128 (1984).

41. GA. CODE § 10-5-5(e), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 18,105, at 14,116 (1984); *see* 1A BLUE SKY L. REP. (CCH) ¶ 18,514 (1984).

42. Letter to CCH from Russel H. Yamashita, Mar. 15, 1983, *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 20,551 (1983).

43. HAWAII REV. STAT. § 485-6(15), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 20,106, at 16,105 (1983).

44. Idaho Rs. & Regs. Dep't Finance R. 27(b)(i), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 21,426, at 17,417 (1982).



tion reflected in the chart, the issuer must undertake to furnish to the Idaho Director of Securities the information furnished by the issuer to any offeree.<sup>45</sup> For offerings made pursuant to Rule 504 of Regulation D, the issuer may be relegated to the isolated transaction exemption described below. However, such issuer may also attempt to rely upon a statutory exemption for offerings not involving any public offering without the added comfort of compliance with a rule.<sup>46</sup> The statutory exemption is probably inapplicable to offerings made pursuant to Rule 504 of Regulation D since the regulations do not include such offerings. An isolated transaction exemption is available for a transaction that is one of not more than three such transactions occurring within the previous twelve months.<sup>47</sup> According to the Idaho Securities Director's office, Idaho examines the total number of purchasers nationwide to determine whether the transaction is isolated. For the isolated transaction exemption as well as the limited offering exemption, a legend is required stating that the securities have not been registered under the Idaho Act. The legend must set forth or refer to the restrictions on transferability and sale of the securities.<sup>48</sup>

### *Illinois*

Illinois does not have the accredited investor concept in exactly the same form as Regulation D, but it has effectively adopted Rules 501(a)(6) and (7) thereof. The thirty-five purchaser limitation does not apply if the aggregate sales price is limited to \$100,000, and such limitation applies only for the twelve-month period immediately preceding the sale in question. For purposes of the thirty-five-purchaser limitation, section 4(G) does not count investors who are exempt from registration by other subsections of section 4.<sup>49</sup> Section 4(H) exempts from registration sales made to natural persons who meet certain net worth or income requirements that parallel those set forth in Rules 501(a)(6) and (7).<sup>50</sup> Section 4(R)<sup>51</sup> exempts from registration sales of \$150,000 or more as provided in Rule 501(a)(5) of Regulation D. The isolated transaction exemption is provided by statute without an explanation of the requirements.<sup>52</sup>

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45. Idaho Rs. & Regs. Dep't Finance R. 27(b)(iii)(e), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 21,426, at 17,418 (1982).

46. IDAHO CODE § 30.1435(1), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 21,137, at 17,114 (1976).

47. Idaho Rs. & Regs. Dep't Finance R. 27(c), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 21,426, at 17,418 (1982).

48. Idaho Rs. & Regs. Dep't Finance R. 26, *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 21,425 (1982).

49. ILL. REV. STAT. ch. 121½, § 4(G), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 22,123, at 18,108 (1984).

50. ILL. REV. STAT. ch. 121½, § 4(H), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 22,123, at 18,108 (1984).

51. ILL. REV. STAT. ch. 121½, § 4(R), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 22,123, at 18,110 (1984).

52. ILL. REV. STAT. ch. 121½, § 4(Q), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 22,123, at 18,110 (1984).

*Indiana*

Offers may be made before the allowance of an exemption, but each prospective purchaser must be advised in writing that the offer is preliminary and subject to material change.<sup>53</sup> The disclosure requirements and the requirement of a filing before sales may be avoided in several instances. One such instance occurs when not more than fifteen of the purchasers are located in Indiana and each such purchaser is an accredited investor or an insider.<sup>54</sup> The published policy of Indiana is to deny an exemption for limited partnership offerings in which North American Securities Administrators Association Guidelines for limited partners' democracy rights are not followed, unless the offering requires a minimum investment by each investor of \$100,000 or more.<sup>55</sup> The Indiana Securities Commission has the power to give a "merit review" to each offering proposed for the exemption.<sup>56</sup>

*Iowa*

The exemption is not available on its face to partnerships organized outside the State of Iowa or to those having their principal place of business outside the State of Iowa. The exemption also appears unavailable for issuers of fractional undivided interests in oil or gas and for offerings in which commissions are to be paid.<sup>57</sup> The Iowa Administrator of Securities has in the past issued orders to allow the exemption to apply to foreign limited partnerships when commissions for sales in Iowa were to be paid only to broker/dealers registered in Iowa and would not exceed ten percent of the interests sold in Iowa. The orders were issued upon a showing of good cause. Good cause was determined to exist for one offering when representations were made that all Iowa investors would either:

- (1) be accredited investors as defined by 17 C.F.R. § 501(a)(4), (5), (6), or (7); or
- (2) have a net worth of \$450,000 (exclusive of home, automobile, or furnishings) in conjunction with a minimum purchase of \$150,000; or
- (3) have a net worth of \$1,000,000 (exclusive of home, automobile, and furnishings) in conjunction with a minimum purchase of \$100,000; or
- (4) have a net worth of \$750,000 (exclusive of home, automobile, and furnishings) and income in the previous year subject to the

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53. IND. CODE § 23-2-1-2(b)(10)(F), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 24,102, at 19,106 (1983).

54. IND. CODE § 23-2-1-2(b)(10)(G)(ii), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 24,102, at 19,106 (1983). An "accredited investor" is defined at IND. CODE § 23-2-1-1(r), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 24,101, at 19,103 (1983).

55. Ind. Sec. Div., Statement of Policy on Limited Partnership Voting Rights, Dec. 1, 1981, *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 24,656 (1981).

56. Ind. Sec. Bull., Jan. 1984, *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 24,662 (1984).

57. IOWA CODE § 502.203(9)(b)(1) & (d), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 25,113, at 20,105 (1983).

fifty percent federal income tax bracket in conjunction with a minimum purchase of \$100,000.<sup>58</sup>

The requirement for filing a Consent to Service of Process has also been waived in the past in connection with granting the exemption.

### *Kansas*

In order for the exemption described in the chart to be available, no commissions or other remuneration for soliciting any purchaser may be paid except to broker/dealers registered in the state.<sup>59</sup> The exemption reflected in the chart has recently become available for oil and gas offerings.<sup>60</sup> In order to comply with the exemption reflected in the chart, the issuer must maintain, for a period of five years, a written record of all information furnished by it to all offerees.<sup>61</sup> In an offering made by an entity that is not formed in Kansas and that is making an offering pursuant to Rules 504 or 506 of Regulation D, the isolated transaction exemption described below may be the only available exemption. An isolated transaction exemption is available for five or fewer sales in a twelve-month period.<sup>62</sup>

### *Kentucky*

A Consent to Service of Process is technically required, but the director's office has orally stated that its policy is not to require that a Consent to Service of Process be filed in connection with the exemption. For offerings made pursuant to Rule 504 of Regulation D, the issuer may be relegated to a statutory exemption without the added comfort of compliance with a rule.<sup>63</sup>

### *Louisiana*

The Louisiana commissioner's office has orally stated that offerings made pursuant to Rule 506 of Regulation D will be given the same exemption as Rule 146 transactions receive, provided that the release discussed below is followed. A Form D must be filed with the office at the same time it is filed with the Securities and Exchange Commission. Additionally, the following should be provided to the commissioner's office:

- (1) a copy of all sales literature;
- (2) a list of all broker/dealers to be used in Louisiana;
- (3) a list of all offerees;

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58. Per confirmation from Iowa Administrator of Securities to author.

59. KAN. ADMIN. REGS. § 81-5-6(a)(1), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 26,405E, at 21,409-7 (1984).

60. Kan. Office Sec. Comm'r Q. Bull., Apr.-June 1983, *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 26,504 (1983).

61. KAN. ADMIN. REGS. § 81-5-6(f), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 26,405E, at 21,409-7 (1984).

62. KAN. ADMIN. REGS. § 81-5-3(a), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 26,405B, at 21,409-5 (1983).

63. KY. REV. STAT. § 292.410(1)(i), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 27,112, at 22,117 (1982).

- (4) an undertaking to file all Form Ds with their office; and
- (5) an undertaking to file a final sales report listing the persons who purchased securities and the amount purchased.<sup>64</sup>

The office of the Louisiana Commissioner of Securities will only accept filings made through the United States mail.<sup>65</sup> For offerings made pursuant to Rules 504 or 505 of Regulation D, the issuer may be relegated to a statutory exemption without the added comfort of compliance with the release issued by the Louisiana Office of the Commissioner of Securities.<sup>66</sup> Winning an argument that the statutory exemption applies to offerings made pursuant to Rule 504 or Rule 505 of Regulation D may be difficult, since the exemption allowed by release does not include such offerings. However, an isolated transaction exemption may be available to such issuers. An isolated transaction exemption is available if such transaction is not being made in the course of repeated and successive transactions of a like character.<sup>67</sup>

### *Maine*

The exemption applies only to offerings made in compliance with Rule 506 of Regulation D, because the exemption is available to transactions not including any public offering within the meaning of section 4(2) of the Securities Act of 1933, as amended, and the rules and regulations thereunder.<sup>68</sup> No exemption would be applicable to an offering made by issuers not formed in Maine and made pursuant to Rule 504 or Rule 505 of Regulation D. In addition to the requirements set forth in the statute, additional requirements exist for the exemption set forth in the chart. An offering memorandum is not specifically required, but the director reserves the right to request an offering memorandum for review prior to granting the exemption. A specific legend is set forth on the Notification of Exemption Form and must appear on the stock certificate, certificate of limited partnership, subscription agreement, or other evidence of investment. A consent to service of process is a part of the Notification of Exemption Form, and suitability standards are imposed. For real estate programs and other programs with similar risks, a net worth of \$100,000 or a net worth of \$35,000 and a net annual income of \$35,000 is required of each investor. For tax shelter programs that are deemed to have higher risks, a \$200,000 net worth, a \$50,000 net worth and \$50,000 annual income, or a \$50,000 net worth and annual income taxed at the rate of fifty percent, is required

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64. La. Office of Comm'r of Sec., Release of Recorder of Sec., May 2, 1978, reissued Dec. 8, 1978, *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 28,557 (1978).

65. La. Office of Comm'r of Sec., Release of Recorder of Sec., Dec. 8, 1978, *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 28,558 (1978).

66. LA. REV. STAT. ANN. § 51:705(12), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 28,105, at 23,105-3 (1980).

67. LA. REV. STAT. ANN. § 51:705(3), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 28,105, at 23,104 (1980).

68. ME. REV. STAT. ANN. tit. 32, § 874-A(3), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 29,134, at 24,111 (1981).

of each investor. All net worth computations are exclusive of home, autos, and furnishings.

### *Maryland*

In order for the exemption described in the chart to be available, no commissions or other remuneration for soliciting any purchaser may be paid except to broker/dealers registered in the state. An exception occurs, however, when the issuer reasonably believes that the recipient has not received a commission from more than one other issuer in the preceding twelve months.<sup>69</sup> The Maryland Securities Act Release No. 24 issued December 15, 1983,<sup>70</sup> provides a general discussion of the exemption, which corresponds to Regulation D. For offerings made pursuant to Rule 504 of Regulation D, another exemption may be available.<sup>71</sup>

### *Massachusetts*

The Massachusetts Secretary of the Commonwealth has recently adopted a temporary rule effective June 7, 1984, which, according to the Director of the Securities Division of the Office of the Secretary of State, will expire ninety days later. The rule allows sales to be made to not more than thirty-five Massachusetts residents. One may reasonably assume that the maximum number of offerees has been correspondingly increased, but the new rule is not clear on this point.<sup>72</sup> If commissions or other remunerations are paid, a notice must be filed, and the exemption will become available five full business days after the filing unless the Secretary of the Commonwealth by order disallows the exemption.<sup>73</sup> The exemption requires specific information to be maintained three years following the completion of the offer, sale, or transaction, whichever is later.<sup>74</sup> Although the policy is not written, Massachusetts requires a notice to be filed within sixty days after completion of an offering. As of December 12, 1983, Massachusetts was in the process of adopting the Uniform Limited Offering Exemption.<sup>75</sup> According to the Director a new limited offering exemption will probably be effective on or before September 6, 1984. The regulations for this exemption are in a proposed state only and may change prior to their final adoption. As proposed, no commission or other remuneration

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69. MD. ADMIN. CODE tit. 02, R. 15(B)(3), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 30,441, at 25,425 (1983).

70. *Reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 30,566 (1983).

71. MD. CORPS. & ASS'NS CODE ANN. § 11-602(9), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 30,172, at 25,119 (1981); MD. ADMIN. CODE tit. 02, R. 09, *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 30,435 (1983).

72. MASS. ADMIN. CODE tit. 950, § 14,402(b)(9)(E), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 31,472, at 26,415 (1984).

73. MASS. GEN. LAWS ANN. ch. 110A, § 402(b)(9), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 31,132, at 26,112 (1982).

74. MASS. ADMIN. CODE tit. 950, § 14,402(b)(9)(D), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 31,472, at 26,415 (1984).

75. Memorandum from E.L. Mackey, Chairman of Small Business Financing Committee, to NASAA Members and interested parties, Jan. 17, 1984, *reprinted in* 1 BLUE SKY L. REP. (CCH) ¶ 5293A (1984).

may be paid either directly or indirectly to any person unless such person is a registered broker/dealer in the state or is exempt from such requirements. The proposed regulations allow filings to be made prior to offers or fifteen days following the first sale in the commonwealth. Because the proposed regulations retain the five-business-day review requirement before the exemption is effective, however, the prudent approach is to file prior to any offers and wait five business days before making any offers or sales.

### *Michigan*

In order for the exemption described in the chart to be available, no commissions or other remuneration for soliciting any purchaser may be paid except to broker/dealers registered in the state. A special notice provision is provided, however, and may be complied with to preserve the exemption for recipients of commissions who would not, but for the requirements of the exemption, need to register.<sup>76</sup> The issuer must undertake to furnish the State Securities Administrator, upon written request, the information furnished to offerees.<sup>77</sup> For offerings made pursuant to Rule 504 of Regulation D, Michigan has another exemption that may be available.<sup>78</sup>

### *Minnesota*

In order for the exemption described in the chart to be available, no commissions or other remuneration for soliciting any purchaser may be paid except to broker/dealers registered in the state.<sup>79</sup> While no legend is specifically required by statute, the Office of the Minnesota Securities Commissioner has taken the position that a legend regarding lack of transferability and lack of registration must be used and that a general legend will satisfy the requirement. A filing must be made ten days prior to any sales within the State of Minnesota. Minnesota has promulgated a form that requires an opinion of the issuer's counsel to be attached thereto stating that the issuer is validly organized and authorized to issue the securities to be sold.<sup>80</sup> The offering must comply with Rule 506 of Regulation D if it involves oil, gas, animal feeding, or animal breeding.<sup>81</sup> An isolated transaction exemption is available for up to five sales of an issuer in any twelve consecutive months, so long as the issuer reasonably believes that all buyers are purchasing for investment and the securities are not adver-

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76. MICH. ADMIN. CODE R. 451-803-7(7)(a), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 32,483A, at 27,423 (1983).

77. MICH. ADMIN. CODE R. 451.803.7(7)(c)(ii), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 32,483A, at 27,424 (1983).

78. MICH. COMP. LAWS § 451.802(b)(9), *reprinted in* 1A BLUE SKY L. REP. (CCH) ¶ 32,132, at 27,121 (1979).

79. MINN. STAT. ANN. § 80A.15, subdiv. 2(h), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 33,115, at 28,114 (1984).

80. MINN. STAT. ANN. § 80A.15, subdiv. 2(h), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 33,115, at 28,114 (1984).

81. 80A MINN. CODE AGENCY R. ch. 2875.0180, *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 33,408 (1983).

tised for sale to the general public.<sup>82</sup> The isolated transaction exemption may not be available for offerings involving oil and gas, but a similar exemption is available.<sup>83</sup>

### *Mississippi*

In order for the exemption described in the chart to be available, sales may be made only by officers of the issuer, the general partner, or by registered broker/dealers.<sup>84</sup> In addition to the filing before any offers or sales, a filing must be made within ten days after completion of the offer, but not later than sixty days after the first sale. Such filing must include the names and addresses of the purchasers.<sup>85</sup> Numerous other detailed requirements mandate compliance by the issuer in order for an exemption from registration to be available.<sup>86</sup> In some instances the financial statements of individual general partners must be sworn to.<sup>87</sup> Mississippi has a guideline dated July 1981<sup>88</sup> that provides suggested disclosures in an offering memorandum involving nonpublic limited partnerships.

### *Missouri*

The exemption is not available with respect to any transaction involving a certificate of interest or participation, including a limited partnership interest in an oil, gas, or mining title or lease, or in payments out of production or under such a title or lease.<sup>89</sup> According to the Commissioner of Securities, however, an emergency rule removing this prohibition has been filed relating to Regulation D offerings. The rule became effective on August 11, 1984. A Consent to Service of Process is technically required by statute, but the Missouri Securities Commissioner's Office has informally stated that as a matter of policy it does not require a consent. The issuer must undertake to furnish the Missouri Commissioner of Securities, upon written request, the information furnished to offerees and must file a Report of Sale reflecting all Missouri purchasers.<sup>90</sup> For offerings made pursuant to Rule 504 of Regulation D, an exemption may be available if the

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82. MINN. STAT. ANN. § 80A.15, subdiv. 2(a), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 33,115, at 28,113 (1984); MINN. CODE AGENCY R. ch. 2875.0150, *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 33,405 (1983).

83. MINN. STAT. ANN. § 80A.30, *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 33,130 (1982).

84. MISS. CODE ANN. § 75-71-203(10), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 34,146, at 29,157 (1981).

85. *Id.*

86. MISS. SEC'y OF STATE RS. 701-729, *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶¶ 34,521-34,535 (1981).

87. MISS. SEC'y OF STATE R. 707(g), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 34,524, at 29,416 (1981).

88. *Reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 34,622 (1981).

89. MO. ADMIN. CODE § 30-54.210(8), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 35,520A, at 30,559 (1983). For such offerings see MO. ADMIN. CODE § 30-54.200, *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 35,520 (1983).

90. MO. ADMIN. CODE § 30-54.210(1)(A)(2), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 35,520, at 30,555-5 to 557 (1983).

necessary waivers are obtained from the Missouri Commissioner of Securities.<sup>91</sup>

### *Montana*

In order for the exemption described in the chart to be available, all sales must be made by broker/dealers registered in the state.<sup>92</sup> The issuer must undertake to furnish to the Montana Commissioner of Securities, upon written request, the information furnished to offerees.<sup>93</sup> For offerings made pursuant to Rule 504 of Regulation D another exemption may be available.<sup>94</sup>

### *Nebraska*

In order for the exemption described in the chart to be available, no commissions or other remuneration for soliciting any purchaser may be paid except to broker/dealers registered in the state.<sup>95</sup> Offerings made in reliance upon Rule 505 of Regulation D are only exempt if the issuer is a corporation that is not or does not intend to engage primarily in oil and gas operations. Offerings made in reliance upon Rule 506 of Regulation D by such issuers, however, may qualify.<sup>96</sup> For offerings made pursuant to Rule 504 of Regulation D and for partnerships making offerings pursuant to Rule 505 of Regulation D, another exemption may be available<sup>97</sup> or the issuer may rely upon the statutory exemption without the added comfort of compliance with a rule.<sup>98</sup> An argument that the statutory exemption applies to such offerings will likely fail since the regulations do not include such offerings. An isolated transaction exemption is provided by statute<sup>99</sup> and an interpretive opinion providing general guidelines has been issued.<sup>100</sup>

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91. MO. REV. STAT. § 409.402(b)(10), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 35,114, at 30,115 (1978).

92. MONT. ADMIN. R. § 6.10.120(1)(a)(i), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 36,420, at 31,504 (1984).

93. MONT. ADMIN. R. § 6.10.120(1)(a)(iii)(B), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 36,420, at 31,505 (1984).

94. MONT. CODE ANN. § 30-10-105(9), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 36,105, at 31,105 (1983).

95. NEB. REV. STAT. § 8-1111(16), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 37,114, at 32,115 (1980).

96. NEB. ADMIN. R. tit. 48, § 001.01(D), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 37,415, at 32,526 (1983).

97. NEB. REV. STAT. § 8-1111(9), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 37,114, at 32,114 (1980). *See generally* NEB. ADMIN. R. 70, *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 37,412 (1982) (notice requirements for exemption).

98. NEB. REV. STAT. § 8-1111(16), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 37,114, at 32,115 (1980).

99. NEB. REV. STAT. § 8-1111(1), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 37,114, at 32,114 (1980).

100. Neb. Dept. Banking & Fin., Interp. Op. No. 2, *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 37,456 (1977).



*Nevada*

Registration is required only of public intrastate offerings.<sup>101</sup> The state has a policy of allowing exemptions for Regulation D offerings as long as a copy of the Form D and a copy of the offering memorandum is filed within fifteen days after sale anywhere.<sup>102</sup> If a written confirmation of exemption is desired, whether the offering is subject to registration or not, Nevada has a policy of issuing such confirmation upon receipt of a Form D and an offering memorandum.

*New Hampshire*

In order for the exemption described in the chart to be available, no commissions or other remuneration for soliciting any purchaser may be paid except to broker/dealers registered in the state.<sup>103</sup> Sales may be made to no more than five persons in the state in any period of twelve consecutive months, subject to filing requirements and a \$300 filing fee.<sup>104</sup> Upon written request, the exemption has in the past been increased to ten purchasers. An isolated transaction exemption exists, however, when no more than five sales of securities of the same issuer are made in any period of twelve consecutive months and: (1) such sales are registered pursuant to the Securities Act of 1933, (2) such sales are exempted from registration by section 3(b) of that Act; or (3) the seller reasonably believes that all buyers are purchasing for investment.<sup>105</sup>

*New Jersey*

For offerings that are not subject to the New Jersey Real Estate Syndication Offerings Law or for offerings not registered under the Securities Act of 1933 or that are exempt therefrom, no registration in New Jersey is required.<sup>106</sup> The New Jersey Real Estate Syndication Offerings Law only applies to public offerings.<sup>107</sup> A safe harbor exemption from a real estate public offering is provided for offerings made pursuant to Rule 506 of Regulation D, provided that all individual accredited investors have such knowledge and experience in evaluating financial and business matters that they are capable of evaluating the merits and risks of the prospective investment.<sup>108</sup> An additional safe harbor exists for an offering that complies with section 4(2) of the Securities Act of 1933, provided that no more

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101. NEV. REV. STAT. § 90.140, *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 38,125 (1984).

102. Nev. Sec. Div., Letter to CCH, *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 38,402 (1983).

103. N.H. REV. STAT. ANN. § 421-B:17II(h), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 39,177, at 34,216 (1981).

104. *Id.*

105. N.H. REV. STAT. ANN. § 421-B:17II(a), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 39,177, at 34,215 (1981).

106. N.J. REV. STAT. § 49:3-60, *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 40,125 (1967); N.J. REV. STAT. § 49:3-29, *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 40,173 (1983).

107. N.J. REV. STAT. § 49:3-29, *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 40,173 (1983).

108. *Id.*

than ten offers are made in New Jersey during any period of twelve consecutive months.<sup>109</sup> For real estate offerings made pursuant to Rule 504 or Rule 505 of Regulation D, a no-action process is available;<sup>110</sup> otherwise the issuer will be relegated to relying upon the nebulous concept that the offering is not a public offering.

### *New Mexico*

In order for an offering made pursuant to Rule 504 of Regulation D to be exempt pursuant to the exemption described in the chart, certain disclosure requirements must be complied with.<sup>111</sup>

### *New York*

Section 359-e of the New York General Business Law requires the registration of all brokers or dealers who sell or offer any securities, whether real estate or not, within the State of New York or any broker/dealer located within the state who sells anywhere.<sup>112</sup> The definition of "dealers" within this Section includes issuers.<sup>113</sup> Section 359-f(2) provides an exemption from the requirements of sections 359-e(2), (3), (4), (5), and (6) for securities that are to be offered in a limited offering to not more than forty offerees anywhere.<sup>114</sup> The filing fee varies with the number of signatures on the M-11 Issuer Statement. The filing fee set forth in the chart was determined from the instruction sheet promulgated by the New York Attorney General's office as follows:

M-11	\$100 Fee plus \$5 for each signature
State Notice	\$50
Further State Notice	\$50
Consent to Service	\$13.50

Section 352-e requires the registration of all public real estate securities offerings.<sup>115</sup> Section 352-g provides an exemption from the requirements of section 352-e, together with the related requirements of sections 352-f and 352-h, for offerings to not more than forty offerees anywhere or for offerings either registered or exempt from the Securities Act of 1933, other than by reason of being an intrastate New York offering.<sup>116</sup> According to telephone conversations with the Bureau of Real Estate Financing, Policy

109. *Id.*

110. N.J. Bureau Sec. Release, May 20, 1974, *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 40,591 (1974).

111. N.M. BLUE SKY REGS. § 83-5 V, *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 41,521, at 36,403 (1983).

112. N.Y. GEN. BUS. LAW § 359-e(3), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 42,128, at 37,117 (1984).

113. *Id.*

114. N.Y. GEN. BUS. LAW § 359-f(2), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 42,131, at 37,122 (1964).

115. N.Y. GEN. BUS. LAW § 352-e(1)(a), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 42,106, at 37,105 (1983).

116. N.Y. GEN. BUS. LAW § 352-g, *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 42,111, at 37,111-5 (1960).

Statement 100 may be relied upon for all Regulation D offerings. Policy Statement 100 and the instructions for section 352-g exemptions provide further explanation and requirements for exemptions of real estate offerings, including an opinion of counsel that the offering is exempt from the registration requirements of the Securities Act of 1933 under section 4(2) thereof.<sup>117</sup> For real estate offerings made pursuant to section 352-g(2), suitability standards have been required in the past before the exemption was granted. The standards have not been uniform and have varied depending upon the unit size, the pay-in period, the risk involved, and other various criteria. For real estate offerings only, New York has offered to issue no-action letters in the following cases: (1) when no more than two offers are made in New York; (2) when both offerees have a preexisting relationship with the issuer; and (3) when both offerees are sophisticated.

#### *North Carolina*

In order for the exemption described in the chart to be available, no commissions may be paid except to registered broker/dealers or to persons exempted from the registration requirements.<sup>118</sup> Certain suitability requirements are imposed for purchasers of real estate, oil and gas, and tax shelter securities.<sup>119</sup> For offerings made pursuant to Rule 504 of Regulation D, another exemption may be available if no more than twenty-five of the offerees are within North Carolina.<sup>120</sup> The filing requirements and other requirements for the exemption as described in the chart are waived if the transaction involves five or fewer North Carolina offerees.<sup>121</sup>

#### *North Dakota*

A report of sales must be filed within thirty days after any quarter of the issuer's fiscal year during which sales were made.<sup>122</sup> There may be no more than ten offerees in the state, and the payment of commissions is expressly prohibited.<sup>123</sup> The Securities Commissioner of North Dakota has regularly waived the prohibition against commissions when they are to be paid to broker/dealers registered in the state. Detailed instructions regarding applications for exemption have been promulgated by the Securities Commissioner that provide the Commissioner with broad powers to

117. N.Y. Bureau Sec., Policy Statement 100, *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶¶ 42,571, 42,572 (as amended 1982).

118. N.C. ADMIN. CODE tit. 18, § .1206(a)(2), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 43,416, at 38,504 (1984).

119. N.C. ADMIN. CODE tit. 18, §§ .1206(a)(4), (5), .1312, .1313, *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶¶ 43,416(a)(4), (5), 43,436, 43,437 (1984).

120. N.C. GEN. STAT. § 78A-17(9), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 43,122, at 38,104 (1983); *see also* N.C. ADMIN. CODE tit. 18, § .1205(b), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 43,415 (1984) (conditions and limitations for limited offerings).

121. N.C. ADMIN. CODE tit. 18, §§ .1205(a), (b)(6), .1208(e), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 43,415, at 38,504 & ¶ 43,418, at 38,507 (1984).

122. N.D. ADMIN. CODE § 72-02-03-01(6), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 44,451, at 39,505 (1983).

123. N.D. CENT. CODE § 10-04-06(9), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 44,106 at 39,105 (1983).

disallow an exemption.<sup>124</sup>

### *Ohio*

In order for the exemption described in the chart to be available, no commissions or other remuneration for soliciting any purchaser may be paid except to broker/dealers registered in the state.<sup>125</sup> The exemption described in the chart may be available only for offerings made pursuant to Rule 506 of Regulation D. For offerings made pursuant to Rule 505 or Rule 504 of Regulation D, the Ohio Securities Commission suggests utilizing other exemptions;<sup>126</sup> however, the Commissioner of the Division of Securities has stated that legislation is currently pending in Ohio that would facilitate offerings made pursuant to Rule 505. The filing fee is \$100 for each initial filing and \$50 for each filing thereafter in a calendar year.<sup>127</sup>

### *Oklahoma*

In order for the exemption described in the chart to be available, no commissions or other remuneration for soliciting any purchaser may be paid except to broker/dealers registered in the state or to broker/dealers registered with the Securities Exchange Commission, if they are not within the purview of the Oklahoma registration provisions.<sup>128</sup> The exemption described in the chart is effective until November 1, 1984. Thereafter, a new exemption designed to coordinate with the Uniform Limited Offering Exemption is to become effective. The new exemption includes offerings made pursuant to Rules 505 or 506 of Regulation D.<sup>129</sup> Regulations regarding the new exemption were promulgated and then withdrawn. Those regulations required a filing to be made ten days prior to any offers or sales. The statute does not provide for an exemption that would include offerings made pursuant to Rule 504 of Regulation D, but the Oklahoma Securities Administrator's Office has informally stated that such an exemption will be available, and the statute provides the Administrator with the authority to grant such an exemption.<sup>130</sup> The opinion letter of the Oklahoma Securities Administrator dated January 20, 1982, discussing integration, should be reviewed if the issuer is a general partner of a limited

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124. Form E-1, Limited Offeree Exemption Instructions, *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 44,515 (1983).

125. OHIO REV. CODE ANN. § 1707.03(Q)(3), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 45,103, at 40,105 (1982).

126. Attorney Examiner, Ohio Div. Sec., Policy Letter, *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 45,731 (1983).

127. *Id.*

128. OKLA. STAT. tit. 71, § 401(b)(9)(C), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 46,151, at 41,118 (1984).

129. OKLA. STAT. tit. 71, § 401(b)(9), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 46,151, at 41,121 (1984).

130. OKLA. STAT. tit. 71, § 401(b)(18), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 46,151, at 41,121 (1984).

partnership and has acted in such capacity for other offerings.<sup>131</sup>

### *Oregon*

In order for the modified registration process to be available, all sales must be made by registered broker/dealers or by persons exempt from such registration.<sup>132</sup> The modified registration process for Regulation D offerings is fully detailed in the rules.<sup>133</sup> These rules provide suitability standards and separate rules for offerings made pursuant to Rules 504, 505, and 506 of Regulation D, respectively. A separate isolated transaction exemption is provided by statute when a transaction is not made in the course of repeated and successive transactions in the state.<sup>134</sup>

### *Pennsylvania*

In order for the exemption described in the chart to be available, no commissions or other remuneration for soliciting any purchaser may be paid except to broker/dealers registered in the state.<sup>135</sup> A statutory exemption is provided for offers to not more than fifty persons and sales to not more than twenty-five persons in the state.<sup>136</sup> The regulations expand those numbers when a registered broker/dealer is making the offer or sale by allowing for sales to ten additional persons and an unlimited number of experienced private placement investors and expand the number of offers to twenty-five additional persons and to the number of experienced private placement investors who actually purchase the securities being offered.<sup>137</sup> The experienced private placement investor is a concept similar to the accredited investor concept of Regulation D; however, the definition is different.<sup>138</sup> Very detailed requirements exist for the exemption, including the existence of an actual agreement not to resell the securities, specific legends, and a right to rescind.<sup>139</sup> Form 203-D must be filed not later than the day on which the securities are first issued or the issuer first receives consideration from any person therefor, whichever is earlier.<sup>140</sup> Certain record keeping is required together with reporting requirements, including

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131. Okla. Sec. Adm'r, Op. Letter, Jan. 20, 1982, *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 46,646 (1982).

132. OR. ADMIN. R. 815-36-060, *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 47,634.

133. OR. ADMIN. R. 815-36-000 to -090, *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶¶ 47,634-47,635 (1982).

134. OR. REV. STAT. § 59.035(2), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 47,104, at 42,104 (1973).

135. PA. CONS. STAT. § 203(d), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 48,113, at 43,105 (1984).

136. *Id.*

137. 64 PA. ADMIN. CODE § 204.010, *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 48,452A, at 43,515 (1983).

138. *See id.*

139. 64 PA. ADMIN. CODE § 203.041, *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 48,435 (1975). For interpretation by the staff of the Pennsylvania Securities Division of Corporate Finance of § 203(d) & (e), see 2 BLUE SKY L. REP. (CCH) ¶ 48,668 (1983).

140. PA. CONS. STAT. § 203(d), *reprinted in* 2 BLUE SKY L. REP. (CCH) ¶ 48,113, at 43,105 (1984).

a filing every twelve months after the date of the Form 203-D filing and after the disposition of proceeds,<sup>141</sup> which can be several years after the offering when payments by investors are made in installments. Very specific requirements also exist for projections.<sup>142</sup> The language that accompanies the accountants' projections should be checked with the Pennsylvania Securities Commissioner's Office prior to putting the offering memorandum together.

### *Rhode Island*

In a letter to CCH dated February 9, 1984, the Rhode Island Department of Business Regulation, Banking Division, Securities Section, stated its adoption of a process for entertaining requests for exemption from registration for offerings made pursuant to Rules 505 or 506 of Regulation D. The number of offerees in the state must not exceed ten, only one broker/dealer may be used in Rhode Island, and such broker/dealer must be registered in the state.<sup>143</sup> For offerings made pursuant to Rule 504 of Regulation D, the isolated transaction exemption may be available. An exemption is available by statute when a transaction is not made in the course of repeated and successive transactions.<sup>144</sup> The office of the Director of Business Regulation of Rhode Island has informally stated that it views the isolated transaction in light of the total offering, including what offers, if any, are made in other states. With respect to such exemption, a letter request should be made, and an offering memorandum should be included with the request.

### *South Carolina*

In order for the exemption described in the chart to be available, no commissions or other remuneration for soliciting any purchaser may be paid except to broker/dealers registered in the state.<sup>145</sup> The filing, which is made no later than thirty days after termination of the offering, must include the names and addresses of the purchasers.<sup>146</sup> For offerings made pursuant to Rule 504 of Regulation D, another exemption may be available.<sup>147</sup>

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141. 64 PA. ADMIN. CODE § 209.010, *reprinted in 2 BLUE SKY L. REP. (CCH)* ¶ 48,477 (1975).

142. 64 PA. ADMIN. CODE § 609.010, *reprinted in 2 BLUE SKY L. REP. (CCH)* ¶ 48,585 (1983).

143. R.I. Dept. Bus. Reg., Bank. Div., Sec. Section, Letter, Feb. 9, 1984, *reprinted in 2 BLUE SKY L. REP. (CCH)* ¶ 50,503 (1984).

144. R.I. GEN. LAWS § 7-11-9(a), *reprinted in 2 BLUE SKY L. REP. (CCH)* ¶ 50,110, at 45,106 (1974).

145. S.C. SEC. COMM'N R. 113-21(A), *reprinted in 3 BLUE SKY L. REP. (CCH)* ¶ 51,521, at 46,508 (1984).

146. S.C. SEC. COMM'N R. 113-21(D)(2), *reprinted in 3 BLUE SKY L. REP. (CCH)* ¶ 51,521, at 46,509 (1984).

147. S.C. CODE ANN. § 35-1-320(9), *reprinted in 3 BLUE SKY L. REP. (CCH)* ¶ 51,132, at 46,107 (1976); *see* S.C. COMM'N R. 113-22, *reprinted in 3 BLUE SKY L. REP. (CCH)* ¶ 51,552 (1967).

*South Dakota*

In order for the exemption described in the chart to be available, no commissions or other remuneration for soliciting any purchaser may be paid except to broker/dealers registered in the state.<sup>148</sup> An exemption for sales to twenty-five or fewer investors is available for South Dakota issuers.<sup>149</sup> The accredited investor concept of Regulation D has been adopted by the Director of the Division of Securities and is discussed in his letter to CCH dated March 31, 1983.<sup>150</sup> Various requirements exist in order for the exemption to be available, including the inclusion of an opinion of counsel regarding the organization of the issuer and the authorization to issue the securities.<sup>151</sup> While not in the statutes or the regulations, the South Dakota Securities Commissioner takes the position that a post-sales notice is required to be filed.

*Tennessee*

In order for the exemption described in the chart to be available, no commissions or other remuneration for soliciting any purchaser may be paid except to broker/dealers registered in the state or registered in the state in which the offer is made.<sup>152</sup> The limited offering exemption, which uses the accredited investor concept, is only applicable to offerings made pursuant to Rule 505 of Regulation D.<sup>153</sup> Even though not required by statute, a filing is recommended by the Tennessee Securities Commissioner's office for the exemption before any offers or sales are made so that a review of the offering can be made. In its review the Tennessee Securities Commission will apply its standards of fairness and reasonableness. These standards are very detailed and include the requirement that a majority vote of the limited partners be sufficient to remove the general partner.<sup>154</sup> Such filing would help prevent a disallowance of the exemption after sales have been made. For offerings not in compliance with Rule 505 of Regulation D, an exemption may be available if no more than fifteen purchasers are within the state.<sup>155</sup> The Tennessee Securities Commissioner's office recommends that a filing be made for the exemption before any offers or sales are made even though not required by statute so that a

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148. S.D. CODIFIED LAWS § 47-31-86.1(2), *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 52,224, at 47,120 (1977).

149. S.D. CODIFIED LAWS § 47-31-86.1, *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 52,224 (1977).

150. Letter from John F. Archer, Director of S.D. Div. of Sec., to CCH, Mar. 31, 1983, *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 52,835 (1983).

151. S.D. ADMIN. R. 20:08:06:14(5), *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 52,784, at 47,511 (1984).

152. TENN. ADMIN. COMP. R. 0780-4-2-.04(2)(a), *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 54,414.

153. TENN. ADMIN. COMP. R. 0780-4-2-.04, *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 54,414.

154. TENN. ADMIN. COMP. R. 0780-4-3.06, *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 54,426.

155. TENN. CODE ANN. § 48-16-103(b)(4), *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 54,157, at 48,153 (1983).

review of the offering can be made. As of January 17, 1984, the adoption of the Uniform Limited Offering Exemption was classified as being in the final stages of adoption.<sup>156</sup> An isolated transaction exemption is available when the aggregate amount of securities sold in the state does not exceed \$100,000 during any twelve-month period.<sup>157</sup> The Tennessee Securities Commissioner's office recommends a filing for this exemption before any offers or sales are made, however, even though not required by statute, and the commissioner's office takes the position that sales made pursuant to this exemption may be made only by the issuer. A form of the Uniform Limited Offering Exemption to be adopted by Tennessee has been proposed and is reprinted in the CCH *Blue Sky Law Reporter*.<sup>158</sup>

### *Texas*

No filing is required for sales exempt from registration pursuant to section 5(I) of the Texas Securities Act, which includes sales when, after the sales in question, the total number of security holders in all states including those who have purchased before the current offering does not exceed thirty-five, or such sales are made to not more than fifteen persons during a twelve-month period.<sup>159</sup> Non-Texas issuers may be able to combine the exemption for sales to not more than fifteen persons with the exemption provided for sales of securities to nonresidents of Texas<sup>160</sup> to provide an exemption in Texas with no filing requirements, so long as no more than fifteen sales are made within the state. No filing is required for sales exempt from registration pursuant to section 5(T) of the Texas Securities Act in any of the following instances: (1) if sales are made to not more than thirty-five new security holders who are both sophisticated and well informed and have become security holders during the twelve-month period ending with the date of the sale in question; (2) if sales are made exclusively to institutional or insider accredited investors; or (3) if offers or sales are made only through a securities dealer registered in Texas.<sup>161</sup>

Because no fee is involved, the form is very short, and because of the possibility of a sale being made that requires a filing, Form 133.29 or a reproduction thereof should be filed with the Texas Securities Commissioner not less than ten business days before any sales are made in Texas. The Texas definition of an accredited investor is substantially the same as

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156. See *supra* note 75.

157. TENN. CODE ANN. § 48-16-103(b)(6), reprinted in 3 BLUE SKY L. REP. (CCH) ¶ 54,157, at 48,154 (1983).

158. TENN. ADMIN. COMP. R. 0780-4-2.04 (proposed), reprinted in 3 BLUE SKY L. REP. (CCH) ¶ 54,414, at 48,505-3 (1983).

159. TEX. ADMIN. CODE tit. 7, § 109.4(8), reprinted in 3 BLUE SKY L. REP. (CCH) ¶ 55,554, at 49,512 (1984).

160. TEX. ADMIN. CODE tit. 7, § 139.7, reprinted in 3 BLUE SKY L. REP. (CCH) ¶ 55,717, at 49,569 (1981).

161. TEX. ADMIN. CODE tit. 7, § 109.4(11)(E), (F), reprinted in 3 BLUE SKY L. REP. (CCH) ¶ 55,554, at 49,512 (1984).



that contained in Regulation D, but is not exactly the same.<sup>162</sup> The Rules suggest that a prohibition be placed on the offering circular regarding its reproduction.<sup>163</sup>

### *Utah*

In order for the exemption described in the chart to be available, no commissions or other remuneration for soliciting any purchaser may be paid except to broker/dealers registered in the state or to an issuer agent registered to sell as an agent of the issuer.<sup>164</sup> The six-month update filing requirement is worded uniquely in Utah. The filing must be made within ten days of every six months after the first sale unless the final notice has been filed.<sup>165</sup> By filing a notice of sales the issuer is deemed to undertake to furnish the Division of Securities, upon request, with a copy of all information relating to the offering.<sup>166</sup> For offerings made pursuant to Rule 504 of Regulation D, the issuer may be relegated to a statutory exemption for offerings not involving any public offering without the added comfort of compliance with a rule.<sup>167</sup> Since Rule 14.2n-1 is promulgated pursuant to section 14(2)(q) of the Utah Securities Act,<sup>168</sup> however, no presumption should be created as to whether an offering pursuant to Rule 504 of Regulation D involves a public offering or not. Winning an argument that the statutory exemption applies to offerings made pursuant to Rule 504 of Regulation D is unlikely, since the regulations do not include such offerings. An exemption is provided by statute for any isolated transaction.<sup>169</sup> While arguably required by statute, the Utah Securities Division does not require the filing of a consent to service of process as a condition of the exemption described in the chart.

### *Vermont*

In order for the exemption described in the chart to be available, all sales must be made by broker/dealers registered in the state.<sup>170</sup> An exemption coordinating with Regulation D other than Rule 504 has been adopted by order.<sup>171</sup> The order recommends enclosing a self-addressed,

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162. TEX. ADMIN. CODE tit. 7, § 104.4(11)(H)(vii), *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 55,554, at 49,512 (1984).

163. TEX. ADMIN. CODE tit. 7, § 104.4(2)(D), *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 55,554, at 49,510 (1984).

164. UTAH ADMIN. R. 14.2n-1(2)(e), *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 57,413.

165. UTAH ADMIN. R. 14.2n-1(3)(b), *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 57,413.

166. UTAH ADMIN. R. 14.2n-1(3)(g), *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 57,413.

167. UTAH CODE ANN. § 61-1-14(2)(n), *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 57,144, at 50,133 (1984).

168. UTAH ADMIN. R. 14.2n-1 preliminary note (3), *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 57,413.

169. UTAH CODE ANN. § 61-1-14(2)(a), *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 57,144, at 50,133 (1984).

170. Vt. Comm'n Bank. & Ins., Order, Jan. 1, 1983, *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 58,404 (1983).

171. *Id.*

stamped envelope in order to expedite the exemption process.<sup>172</sup> For offerings made pursuant to Rule 504 of Regulation D, the issuer will be required to register with the state.<sup>173</sup> An exemption is provided by statute for any isolated transaction.<sup>174</sup>

### *Virginia*

In order for the exemption described in the chart to be available, sales may be made only by persons whom the issuer has reasonable grounds to believe and whom the issuer after making reasonable inquiry does believe are registered as broker/dealers in the state.<sup>175</sup> The issuer must undertake to provide to the Virginia Commissioner of Securities, upon written request, the information furnished to offerees.<sup>176</sup> For offerings made pursuant to Rule 504 of Regulation D, an exemption may be available when, after such sale, no more than thirty-five security holders anywhere will be involved.<sup>177</sup> An interpretative process is available upon payment of a \$500 fee to the Virginia Securities Commission.<sup>178</sup>

### *Washington*

The issuer must undertake to provide to the Administrator of Securities, upon written request, the information furnished to any purchaser who is not an accredited investor.<sup>179</sup> The issuer must maintain written documentation supporting the qualification of each nonaccredited investor for three years following the termination of an offering, including in some instances proof that the purchaser or his representative is capable of reading and interpreting financial statements.<sup>180</sup> The Washington Securities Division does not allow the exemption described in the chart to apply to offerings made pursuant to Rules 504 or 505 of Regulation D. The acting commissioner has stated that his staff is currently designing an exemption to coincide with Rule 505. A statutory exemption is also available for offerings not involving a public offering and for any isolated transaction,<sup>181</sup> so long as no more than three sales of a security are made in any twenty-four-

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172. *Id.*

173. *Id.*

174. VT. STAT. ANN. tit. 9, § 4204(3), *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 58,104, at 51,103 (1971).

175. VA. CORP. COMM'N R. 503(A)(1), *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 60,439 (1983).

176. VA. CORP. COMM'N R. 503(A)(3)(b), *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 60,439, at 53,513-6 (1983).

177. VA. CODE § 13.1-514(b)(8), *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 60,114, at 53,110 (1984).

178. VA. CODE § 13.1-525, *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 60,128, at 53,115 (1984).

179. WASH. ADMIN. CODE R. 460-44A-503(2), *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 61,754, at 54,549 (1982).

180. WASH. ADMIN. CODE R. 460-44A-506(2)(b)(ii), *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 61,757, at 54,549 (1983).

181. WASH. REV. CODE § 21.20.320(1), *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 61,133, at 54,114 (1983); *see* Statement of Policy No. 83-43, June 6, 1983, *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 61,788L (1983).

month period. Other exemptions are available when no commissions are paid.<sup>182</sup>

### *West Virginia*

As of January 17, 1984, the adoption of the Uniform Limited Offering Exemption (ULOE) was classified as being in the final stages of adoption.<sup>183</sup> Until the ULOE is adopted by the state, registration is required if commissions are to be paid for solicitation of investors other than institutions.<sup>184</sup>

### *Wisconsin*

In order for the exemption described in the chart to be available, no commissions or other remuneration for soliciting any purchaser may be paid except to broker/dealers registered in the state.<sup>185</sup> A filing must be made not later than the earlier of the date on which an offering document is first used or the first sale is made in the state in reliance upon the exemption.<sup>186</sup> The exemption described in the chart is not applicable to offerings made pursuant to Rule 504 of Regulation D, but other exemptions may be available.<sup>187</sup>

### *Wyoming*

Without a waiver, the statutory exemption does not allow commissions to be paid other than for solicitation of institutional investors and limits the total Wyoming offerees to fifteen.<sup>188</sup> The Secretary of State of Wyoming will consider modifying or waiving the requirements of the statute if a letter requesting such action is submitted with copies of all offering material to be used in Wyoming and a \$100 examination fee. The usual requests considered are for waiving the prohibition against payment of commissions or for raising the allowed number of offerees to thirty-five.<sup>189</sup>

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182. WASH. REV. CODE § 21.20.320(9), *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 61,133, at 54,114 (1983); WASH. ADMIN. CODE RS. 460-44A-060, 460-46A-010 to -165, *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶¶ 61,746, 61,758-61,760S (1980).

183. *See supra* note 75.

184. W. VA. CODE § 32-4-402(b)(9), *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 63,132, at 55,112 (1974).

185. WIS. STAT. § 551.23(19)(b), *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 64,113, at 56,107 (1984).

186. WIS. STAT. § 551.23(19)(d), *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 64,113, at 56,107 (1984).

187. WIS. ADMIN. CODE § 2.02(10) SEC, *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 64,512, at 56,510 (1984). Various interpretations and opinions of Office of Wisconsin Securities Commissioner are reprinted in 3 BLUE SKY L. REP. (CCH) ¶¶ 64,809, 64,868, 64,881, 64,883, 64,884, 64,885 (1978). *See id.* ¶ 64,900, which is not directly applicable to the exemptions available, but is informative as to the position of the Wisconsin Securities Commission.

188. WYO. STAT. § 17-4-114(b)(ix), *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 66,114, at 57,114 (1980).

189. Wyo. Sec. Div. Regs. ch. IV, § 5, *reprinted in* 3 BLUE SKY L. REP. (CCH) ¶ 66,420, at 57,506 (1984).

THE ACCOMPANYING NARRATIVE IS  
AN INTEGRAL PART OF THIS CHART

LIMITED OFFERING EXEMPTIONS

Jurisdiction	Limited Offering Exemption	Statutes or Rules	CCH ¶	Number of Purchasers	Accredited Investor Concept	Filing Before Offer or Sales	Filing After Sale or Completion	Form D	Their Form	Memo	Legend	Fee	Consent to Service	Isolated Transaction	Discl.	Suitability Standards
Federal	yes	Reg. D 17CFR 230.501-.506	N/A	35	yes	no	15S 6mS 30C	yes	N/A	no	yes	no	no	no	Reg. D	Reg. D
AL	yes 504N	8-6-11(a)(9) R. 830-a-6-11 8-6-12	711(a)(9) 7471 7112	35	yes	5(b)F	30C	yes	no	yes	yes	\$150	yes	no	yes	yes
AK	no	3AAC 08500-506 Modified registration process for Regulation D offerings	8448-8450A	35	yes	F	30C	no	yes	no	yes	\$50- \$1,500	yes	no	Reg. D	yes
AZ	yes 504N	44-1844(1) R. 14-4-126 44-1872	9136(1) 9536 9162	35	yes	no	15S 6mS 30C	yes plus	no	no	yes	no	no	no	Reg. D	yes
AR	yes	67-1248(b)(14) 67-1248(f) R. 14(b)(14) 67-1260(g)	10,114(b)(14) 10,114(f) 10,512(B)(14)(b)(14) 10,126	35	yes	5(b)F	yes	yes plus	no	yes	yes	\$100- \$500	yes	no	yes	yes
CA	yes	25102(f) R. 260.102.12 R. 260.102.13 R. 260.102.14	11,131(f) 11,780A 11,780B 11,780C 12,565 11,196	35	yes	no	30C	yes	no	no	no	\$25- \$300	yes	no	no	yes
CO	yes	11-51-112(2)(a) 11-51-113(2)(i) 11-51-127 11-51-107	13,113(2)(a) 13,113(2)(i) 13,127 13,561	35	yes	no	10S	no	no	no	no	\$80	yes	no	no	no
CT	yes 504N	36-490(b)(9) R. 36-500-22(b)(9) 36-502(g)	14,121(b)(9) 14,422(b)(9) 14,133(g)	35	yes	S	15S	yes plus	no	no	yes	\$25	yes	no	Reg. D	Reg. D

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LIMITED OFFERING EXEMPTIONS

Jurisdiction	Limited Offering Exemption	Statutes or Rules	CCH ¶	Number of Purchasers	Accredited Investor Concept	Filing Before Offers or Sales	Filing After Sale or Completion	Form D	Their Form	Memo	Legend	Fee	Consent to Service	Isolated Transaction	Discl.	Suitability Standards
DE	yes	7309(b)(9) R. 9(b) R. 9(c)	15.109(b)(9) 15.419B 15.419C	35	yes	no	20C 6mS	yes	yes	no	yes	no	yes	no	Reg.D	Reg.D
District of Columbia	No registration requirements for issuers.															
FL	yes	517.06(12) 517.021(1) R. 3E-500.05 R. 3E-500.06 R. 3E-500.07	17.106(12) 17.102(1) 17.445 17.446 17.447	35	yes	no	no	no	no	no	no	no	no	no	yes	yes
GA	yes 504N	10-5-9(16) R. 590-4-5-.01 10-5-18	18.109(16) 18.441 18.118	35	yes	S	no	yes plus	no	yes	no	\$250	yes	no	Reg.D	Reg.D
HI	yes 504N 505N	485.6(15) letter of 3-15-83	20.106(15) 20.551	35	yes	no	15S 6mS 30C	yes	no	no	no	no	no	no	Reg.D	Reg.D
ID	yes 504N	30-1435(1) R. 26 R. 27 30-1436	21.137(1) 21.425 21.426 21.138	35	yes	10(b)F	6mS 30C	yes plus	no	no	yes	\$10	no	yes	Reg.D	yes
IL	yes	4(G) 4(Q)	22.123(G) 22.123(Q)	35	no	no	6mS 30C	no	yes	no	no	\$100	no	yes	no	no
IN	yes	23-2-1-2(b)(10) 23-2-1-2(e) R. 3.5 R. 710 IAC 1-3.5-4 24.477A 24.117 24.662	24.102(b)(10) 24.102(e) 24.477-24.480 24.479A 24.117 24.662	35 anywhere or 15 in the state	yes	10(b)S	6mS 30C	no	yes proposed	yes	yes	\$100	yes	no	yes	yes
IA	maybe	502.203(9) R. 510-50.17(502)	25.113(9) 25.417	less than 36 in the State	no	15F	no	no	no	yes	no	no	yes	no	no	yes



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LIMITED OFFERING EXEMPTIONS

Jurisdiction	Limited Offering Exemption	Statutes or Rules	CCH ¶	Number of Purchasers	Accredited Investor Concept	Filing Before Offers or Sales	Filing After Sale or Completion	Form D	Their Form	Memo	Legend	Fee	Consent to Service	Isolated Transaction	Discl.	Suitability Standards
MN	yes	80A.15(2)(b) ch. 287.5.0170 ch. 287.5.0180 80A.28(5) 80A.15(2)(a) ch. 287.5.0150 80A.27(7)	33.115(2)(b) 33.407 33.408 33.128(5) 33.115(2)(a) 33.405 33.127(7)	35	yes	10S	no	no	yes	yes	no	\$50	yes	yes	Reg.D	Reg.D
MS	yes	75-71-203(10) R. 707 R. 711 34.526 75-71-701 34.187	34.146(10) 34.524 34.526 34.187	35	no	F or S	60S 10C	no	yes	yes	yes	no	yes	no	yes	yes
MO	yes 504N	409.402(c) 30-54.210 R. 30-50.0302(E) 409.415	35.114(c) 35.520A 35.403(2)(E) 35.127	35	yes	no	15S 30C	yes plus	no	no	no	\$50	yes	no	Reg.D	yes
MT	yes 504N	30-10.05(16) R. 6.10.120 30-10-208	36.05(16) 36.420 36.115	35	yes	10F or 10S	15S 6mS 30C	yes plus	no	no	no	\$200- \$1,000	yes	no	Reg.D	yes
NE	yes 504N	8-1111(16) ch. 15 ch. 12 8-1111(1) 8-1112	37.114(16) 37.415 37.412 37.114(1) 37.115	35	yes	no	30S	yes	no	yes	no	no	no	yes	Reg.D	Reg.D
NV	yes	90.140	38.125	No registration requirements for interstate transactions												
NH	yes	421-B-17 II(b) 421-B-17 II(a) 39.194 421-B-30 VII	39.177 II(b) 39.177 II(a) 39.194 39.193 VII	5	no	10S	no	no	yes	no	no	\$300	yes	yes	no	no
NJ (non Real Estate)	yes	493-60 493-73	40.125 40.148	N/A	N/A	no	no	no	no	no	no	no	yes	no	Reg.D	Reg.D

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LIMITED OFFERING EXEMPTIONS

Jurisdic- tion	Limited Offering Exemption	Statutes or Rules	CCH ¶	Number of Pur- chasers	Accredited Investor Concept	Filing Before Offers or Sales	Filing After Sale or Comple- tion	Form D	Their Form	Memo	Legend	Fee	Con- sent to Service	Isolated Trans- action	Discl.	Suitabil- ity Stan- dards
NJ	yes 504N (Real Estate)	49:3-29 49:3-73	40,591 40,148 40,596	35	yes	no	no	no	no	no	no	no	yes	no	Reg.D	yes
NM	yes	58-13-3(M) R. 83-5	41,103(M) 41,521	35	yes	20F	ISS 6mS 30C	yes	yes	yes	yes	\$250	yes	no	Reg.D	yes
NY (non Real Estate)	yes	359-4(2)	42,131(f)(2)	Not more than 40 anywhere	no	F	no	no	yes	yes	no	\$218.50	yes	no	no	no
NY (Real Estate)	yes	352-g 359-4(2) Policy Statement 100 Instructions 352-g exemptions	42,111(g) 42,131(f)(2) 42,571 42,572	35	yes	F	yes	no	no	yes	yes	\$350- \$10,100	yes	yes	yes	yes
NC	yes 504N	78A-17(17) R. 1206 R. 1207 R. 1208 R. 1312 R. 1313	43,122(17) 43,416 43,417 43,418 43,436 43,437	35	yes	10(b)S	30C	yes plus	no	yes	yes	\$75	yes	no	Reg.D	yes
ND	yes	10-04-06(9) R. 73-02-03-01 R. 73-02-05-01 10-04-14	44,106(9), 44,515 44,451 44,454 44,122	10	no	F	yes	no	yes	yes	yes	\$100	yes	no	yes	yes
OH	yes 504N 505N	1707.03(Q) R. 13016-3-03 1707.11	45,103(Q) 45,731 45,523 45,113	35	yes	no	60S	yes	yes	no	no	\$100- \$150	no	no	Reg.D	Reg.D
OK	yes	401-4b(9)(C) R. 401(b)(9) 413	46,151(b)(9)(C) 46,414 46,163	35	yes	no	ISS 6mS 30C	yes	no	no	no	\$100	yes	no	Reg.D	Reg.D



THE ACCOMPANYING NARRATIVE IS  
AN INTEGRAL PART OF THIS CHART

LIMITED OFFERING EXEMPTIONS

Jurisdiction	Limited Offering Exemption	Statutes or Rules	CCH ¶	Number of Purchasers	Accredited Investor Concept	Filing Before or After Sale or Completion	Filing After Sale or Completion	Form D	Their Form	Memo	Legend	Fee	Consent to Service	Isolated Transaction	Discl.	Suitability Standards
OR	no	Modified registration process for Regulation D offerings Div.36 59.155 59.065(4) 47.119 47.107(4)	47.634-47.635	35	yes	F	30C	yes	yes	no	yes	\$25- \$500	yes	yes	yes	yes
PA	yes	203(d) 203(e) 602(b)(viii) R. 204.010 R. 209.010 R. 203.041 R. 203.041 R. 609.010 48.477 48.435 48.585	48.113(d) 48.113(e) 48.162(b)(viii) 48.432A	35	no	yes	yes	no	yes	yes	yes	\$25- \$400	no	no	yes	no
RI	maybe	7-11.9(a) 50.503 50.110(a)	50.503 50.110(a)	10	no	F	no	no	no	yes	no	no	no	yes	no	no
SC	yes 506N	35-1.320(9) R. 113-21	51.132(9) 51.521	35	yes	5(b)F	30C	yes plus	no	yes	yes	\$300	yes	no	Reg.D	Reg.D
SD	yes	47-31-86.4 47-31-86.1 47-31-57 R. 2008.06:14	52.227 52.224 52.835 52.178 52.784	5	yes	10S	C	no	yes	yes	yes	\$100	yes	no	yes	no
TN	yes 506N 506N	48-16-102(b)(11) 48-16-115 48-16-116 R. 0780-4-2.04 54.414 48-16-103(b)(6) 54.157(b)(6) 54.178	54.157(b)(11) 54.169 54.170 54.414 54.157(b)(6) 54.178	15	yes	no	15S 6mS 30C	yes	no	yes	no	no	yes	yes	Reg.D	yes
TX	yes	581-5(1) 581-5(T) R. 109.4 R. 139.7	55.105(1) 55.105(T) 55.554 55.717	35	yes	Maybe 10(b)S	no	no	yes	no	yes	no	no	no	yes	yes

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LIMITED OFFERING EXEMPTIONS

Jurisdic- tion	Limited Offering Exemption	Statutes or Rules	CCH ¶	Number of Pur- chasers	Accredited Investor Concept	Filing Before or Sales	Filing After Sale or Comple- tion	Form D	Their Form	Memo	Legend	Fee	Con- sent to Service	Isolated Trans- action	Discl.	Suitabil- ity Stan- dards
UT	yes 504N	61-1-14(2)(q) 61-1-14(2)(n) R. 14.2n-1 R. 18.4(b) 61-1-14(2)(a) 61-1-26	57.144(2)(q) 57.144(2)(n) 57.413 57.417(b) 57.144(2)(a) 57.163	35	yes	no	15S 6mS 30C	yes	yes	no	yes	\$50	no	yes	Reg.D	Reg.D
VT	yes 504N	9-4204(3) order eff. 1/1/84	58.104(3) 58.404	35	yes	10F	15S 6mS 30C	yes plus	no	yes	no	\$100	no	yes	Reg.D	Reg.D
VA	yes 504N	13.1-514(b)(14) R. 503 13.1-517	60.114(b)(14) 60.439 60.118	35	yes	no	15S	yes plus	no	no	no	\$250	yes	no	Reg.D	yes
WA	yes 504N 503N	21.20.320(1) R. WAC 460-44A-501 R. WAC 460-44A-502 R. WAC 460-44A-503 R. WAC 460-44A-506 21.20.330	61.133(1) 61.752 61.753 61.754 61.757 61.135	35	yes	10(b) F or S	30C	yes	yes	no	yes	\$300	yes	yes	Reg.D	yes
WV	no															
WI	yes 504N	551.23(19) 551.23(18)	64.113(19) 64.113(18)	35	yes	F or S	no	yes	no	yes	no	\$200	yes	no	Reg.D	yes
WY	maybe	17-4-114(b)(ix) R. ch. IV § 5	64.895 66.420	15	no	F	no	no	no	yes	no	\$100	yes	no	no	yes

