

Sec. 36b-31-21b-9b. Exemption for transactions pursuant to rules 504, 505 and 506 of regulation D

(a) If the requirements of this section are satisfied, section 36b-21 (b) (9) (A) of the general statutes shall exempt from section 36b-16 of the general statutes any offer or sale of securities made in compliance with Rules 501, 502, 503 and 506 of Regulation D, 17 C.F.R. §§ 230.501, 230.502, 230.503 and 230.506 under the Securities Act of 1933.

(b) If the requirements of this section are satisfied, section 36b-21 (b) (9) (B) of the general statutes shall exempt from section 36b-16 of the general statutes transactions made in compliance with (1) Rules 501, 502, 503 and 505 of Regulation D, 17 C.F.R. §§ 230.501, 230.502, 230.503 and 230.505 under the Securities Act of 1933 or (2) Rules 501, 502, 503 and 504 of Regulation D, 17 C.F.R. §§ 230.501, 230.502, 230.503 and 230.504 under the Securities Act of 1933.

(c) In any transaction pursuant to Rule 504, 505 or 506 of Regulation D, 17 C.F.R. §§ 230.504, 230.505 and 230.506 under the Securities Act of 1933, the aggregate commission, discount or other similar remuneration paid or given directly or indirectly in connection with the sale, excluding legal, accounting and printing fees, shall not exceed 15 percent of the initial offering price. For purposes of this subsection, “15 percent of the initial offering price” means 15 percent of the number of securities sold multiplied by the offering price of those securities. Such limitation shall not apply where a statement itemizing such remuneration is filed with the commissioner before the first sale in this state and given to each purchaser in this state before a sale to that purchaser. Nothing in this subsection shall be construed to affect the need for those disclosures required by Rule 502 of Regulation D, 17 C.F.R. § 230.502 and subsection (d) of this section.

(d) If the issuer sells securities pursuant to Rules 505 or 506 of Regulation D, 17 C.F.R. §§ 230.505 and 230.506, to any purchaser in this state who is not an accredited investor, the disclosure requirements in Rule 502 (b) of Regulation D, 17 C.F.R. § 230.502 (b) shall apply with respect to all purchasers in this state, whether or not accredited. In complying with the financial statement requirements of Rule 502 (b), it shall be presumed for purposes of satisfying the requirements of this section that unreasonable effort or expense exists when an issuer has been in business for less than one year.

(e) If the offering is made pursuant to Rule 504 of Regulation D, 17 C.F.R. § 230.504, the total number of non-accredited investors in this state shall not exceed 35. Prior to any sale pursuant to Rule 504, each offeree in this state shall be given a written disclosure statement containing (1) the name, address and state of organization of the issuer and the names and residence addresses of the issuer’s officers, directors, general partners or other principals, however designated; (2) a brief description of the offering, including the securities being offered and the intended application of the offering proceeds; (3) the issuer’s balance sheet dated within 120 days of the start of the offering and a profit and loss statement for the issuer’s most recent fiscal year and for any period between the close of the last fiscal year and the date of the balance sheet. Such financial statements need not be audited; and (4) a discussion of the principal factors that make the offering speculative or one of high risk. The written disclosure statement shall carry the following legend set forth boldly on the outside cover: **“THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE BANKING COMMISSIONER OF THE STATE OF**

CONNECTICUT NOR HAS THE COMMISSIONER PASSED UPON THE ACCURACY OR ADEQUACY OF THE OFFERING. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.” An issuer defined in subsection (b) of section 36b-31-18a of the regulations which elects to rely on the exemption from registration in section 36b-21 (b) (9) (B) of the general statutes for offerings exempt under Rule 504 of Regulation D, 17 C.F.R. § 230.504, may use Form U-7 to satisfy the written disclosure and financial statement requirements of this subsection.

(f) No exemption under this section shall be available for the offer or sale of securities if (1) such offer or sale is disqualified under Rule 262 of Regulation A, 17 C.F.R. § 230.262 under the Securities Act of 1933, or (2) if the issuer, any of its predecessors, any affiliated issuer or any person associated with the issuer, as described below, (A) has been convicted of a felony involving the purchase or sale of a security within five years prior to the commencement of the offering or (B) is currently subject to any state administrative order entered or any judgment procured by a state securities administrator within five years prior to the commencement of the offering, unless the person subject to such order or judgment is currently registered or licensed to conduct securities-related business in the jurisdiction where the order or judgment was entered or the state securities administrator has indicated to the person in writing that the order or judgment would not operate to preclude reliance on the limited offering exemption in that state. Any order issued by the securities administrator of another state must have been based on grounds that would be sufficient for the issuance of an order under the Act. For purposes of this subsection, “person associated with the issuer” means any director, officer or general partner of the issuer; any beneficial owner of 10 percent or more of any class of the issuer’s equity securities; any promoter of the issuer presently connected with it in any capacity; any underwriter of the securities to be offered; or any partner, director or officer of such underwriter.

(g) Securities acquired in a transaction exempt under this section shall have the status of securities acquired in a transaction under Section 4 (2) of the Securities Act of 1933 and cannot be resold without registration under section 36b-16 of the general statutes or an exemption from registration under section 36b-21 of the general statutes. The issuer shall exercise reasonable care to ensure compliance with such limitations on resale, including but not limited to, the following: (1) Reasonable inquiry to determine if the purchaser is acquiring the securities for himself or for other persons; (2) written disclosure to each purchaser prior to sale that the securities have not been registered under section 36b-16 of the general statutes and therefore cannot be resold unless they are registered or exempt from registration under the Act; and (3) placement of a legend on the certificate or other document evidencing the securities stating that the securities have not been registered under the Act and setting forth or referring to the restrictions on transferability and sale of the securities. The commissioner may accept a general legend addressing state law requirements if he determines that use of such legend would adequately protect purchasers in this state.

(h) Prior to the first sale of securities in this state, the issuer shall file with the commissioner (1) a notice on Form D, 17 C.F.R. § 239.500, manually signed by a person duly authorized by the issuer which includes an undertaking by the issuer to furnish state securities administrators, upon their written request, with information furnished by the issuer to offerees; (2) a Uniform Consent to Service of Process (Form U-2) executed pursuant to

section 36b-33 (g) of the general statutes; and (3) the filing fee prescribed under section 36b-21 (b) (9) of the general statutes. The issuer shall also provide the commissioner with the name and address of the person who will offer or sell the securities in this state, whether the person offering or selling the securities in Connecticut shall receive any direct or indirect remuneration related to offers or sales of such securities and whether such person is engaged in the business of effecting securities transactions.

(i) Failure to timely file the notice required by this section shall not, in and of itself, preclude reliance on the exemption afforded by section 36b-21 (b) (9) of the general statutes. If the commissioner finds that such notice has not been timely filed with respect to more than one offering, he may issue an order restricting the right to use exemptions under this section and section 36b-31-21b-9a of the regulations in the future. Such order may be directed to any person subject to the prohibition in section 36b-16 of the general statutes.

(j) Until such time as the offering has been completed, the issuer shall promptly notify the commissioner in writing of any material changes in the information submitted pursuant to this section. The issuer shall also provide to the commissioner such additional information concerning the status or nature of the offering as the commissioner may request, either prior to, or following completion of the offering.

(Effective August 22, 1994; Transferred July 3, 1995)