

Regulation S -- Preliminary Notes

1. The following rules relate solely to the application of Section 5 of the Securities Act of 1933 (the *Act*) and not to antifraud or other provisions of the federal securities laws.
2. In view of the objective of these rules and the policies underlying the Act, Regulation S is not available with respect to any transaction or series of transactions that, although in technical compliance with these rules, is part of a plan or scheme to evade the registration provisions of the Act. In such cases, registration under the Act is required.
3. Nothing in these rules obviates the need for any issuer or any other person to comply with the securities registration or broker-dealer registration requirements of the Securities Exchange Act (the *Exchange Act*), whenever such requirements are applicable.
4. Nothing in these rules obviates the need to comply with any applicable state law relating to the offer and sale of securities.
5. Attempted compliance with any rule in Regulation S does not act as an exclusive election; a person making an offer or sale of securities may also claim the availability of any applicable exemption from the registration requirements of the Act. The availability of the Regulation S safe harbor to offers and sales that occur outside of the United States will not be affected by the subsequent offer and sale of these securities into the United States or to U.S. persons during the distribution compliance period, as long as the subsequent offer and sale are made pursuant to registration or an exemption therefrom under the Act.
6. Regulation S is available only for offers and sales of securities outside the United States. Securities acquired overseas, whether or not pursuant to Regulation S, may be resold in the United States only if they are registered under the Act or an exemption from registration is available.
7. Nothing in these rules precludes access by journalists for publications with a general circulation in the United States to offshore press conferences, press releases and meetings with company press spokespersons in which an offshore offering or tender offer is discussed, provided that the information is made available to the foreign and United States press generally and is not intended to induce purchases of securities by persons in the United States or tenders of securities by United States holders in the case of exchange offers. Where applicable, issuers and bidders may also look to Rule 135e and Rule 14d-1(c) of this chapter. Where applicable, issuers and bidders may also look to Rule 135e and Rule 14d-1(c).
8. The provisions of this Regulation S shall not apply to offers and sales of securities issued by open-end investment companies or unit investment trusts registered or required to be registered or closed-end investment companies required to be registered, but not registered, under the Investment Company Act of 1940 (the *1940 Act*).

Rule 901 -- General Statement

For the purposes only of section 5 of the Act , the terms *offer*, *offer to sell*, *sell*, *sale*, and *offer to buy* shall be deemed to include offers and sales that occur within the United States and shall be deemed not to include offers and sales that occur outside the United States.

Rule 902 -- Definitions

As used in Regulation S, the following terms shall have the meanings indicated.

- a. *Debt securities*. "Debt securities" of an issuer is defined to mean any security other than an equity security as defined in Rule 405, as well as the following:
 1. Non-participatory preferred stock, which is defined as non-convertible capital stock, the holders of which are entitled to a preference in payment of dividends and in distribution of assets on liquidation, dissolution, or winding up of the issuer, but are not entitled to participate in residual earnings or assets of the issuer; and
 2. Asset-backed securities, which are securities of a type that either:
 - i. Represent an ownership interest in a pool of discrete assets, or certificates of interest or participation in such assets (including any rights designed to assure servicing, or the receipt or timeliness of receipt by holders of such assets, or certificates of interest or participation in such assets, of amounts payable thereunder), provided that the assets are not generated or originated between the issuer of the security and its affiliates; or
 - ii. Are secured by one or more assets or certificates of interest or participation in such assets, and the securities, by their terms, provide for payments of principal and interest (if any) in relation to payments or reasonable projections of payments on assets meeting the requirements of paragraph (a)(2)(i) of this section, or certificates of interest or participations in assets meeting such requirements.
 - iii. For purposes of paragraph (a)(2) of this section, the term "assets" means securities, installment sales, accounts receivable, notes, leases or other contracts, or other assets that by their terms convert into cash over a finite period of time.
- b. *Designated offshore securities market*. "Designated offshore securities market" means:
 1. The Eurobond market, as regulated by the International Securities Market Association; the Alberta Stock Exchange; the Amsterdam Stock Exchange; the Australian Stock Exchange Limited; the Bermuda Stock Exchange; the Bourse de Bruxelles; the Copenhagen Stock Exchange; the European Association of Securities Dealers Automated Quotation; the Frankfurt Stock Exchange; the Helsinki Stock Exchange; The Stock Exchange of Hong Kong

Limited; the Irish Stock Exchange; the Istanbul Stock Exchange; the Johannesburg Stock Exchange; the London Stock Exchange; the Bourse de Luxembourg; the Mexico Stock Exchange; the Borsa Valori di Milan; the Montreal Stock Exchange; the Oslo Stock Exchange; the Bourse de Paris; the Stock Exchange of Singapore Ltd.; the Stockholm Stock Exchange; the Tokyo Stock Exchange; the Toronto Stock Exchange; the Vancouver Stock Exchange; the Warsaw Stock Exchange and the Zurich Stock Exchange; and

2. Any foreign securities exchange or non-exchange market designated by the Commission. Attributes to be considered in determining whether to designate an offshore securities market, among others, include:
 - i. Organization under foreign law;
 - ii. Association with a generally recognized community of brokers, dealers, banks, or other professional intermediaries with an established operating history;
 - iii. Oversight by a governmental or self-regulatory body;
 - iv. Oversight standards set by an existing body of law;
 - v. Reporting of securities transactions on a regular basis to a governmental or self-regulatory body;
 - vi. A system for exchange of price quotations through common communications media; and
 - vii. An organized clearance and settlement system.

c. *Directed selling efforts.*

1. "Directed selling efforts" means any activity undertaken for the purpose of, or that could reasonably be expected to have the effect of, conditioning the market in the United States for any of the securities being offered in reliance on this Regulation S (Rule 901 through Rule 905, and Preliminary Notes). Such activity includes placing an advertisement in a publication "with a general circulation in the United States" that refers to the offering of securities being made in reliance upon this Regulation S.
2. Publication "with a general circulation in the United States":
 - i. Is defined as any publication that is printed primarily for distribution in the United States, or has had, during the preceding twelve months, an average circulation in the United States of 15,000 or more copies per issue; and
 - ii. Will encompass only the U.S. edition of any publication printing a separate U.S. edition if the publication, without considering its U.S. edition, would not constitute a publication with a general circulation in the United States.
3. The following are not "directed selling efforts":
 - i. Placing an advertisement required to be published under U.S. or foreign law, or under rules or regulations of a U.S. or foreign regulatory or self-regulatory authority, provided the advertisement contains no more information than legally required and includes a

statement to the effect that the securities have not been registered under the Act and may not be offered or sold in the United States (or to a U.S. person, if the advertisement relates to an offering under Category 2 or 3 (paragraph (b)(2) or (b)(3)) in Rule 903) absent registration or an applicable exemption from the registration requirements;

- ii. Contact with persons excluded from the definition of "U.S. person" pursuant to paragraph (k)(2)(vi) of this section or persons holding accounts excluded from the definition of "U.S. person" pursuant to paragraph (k)(2)(i) of this section, solely in their capacities as holders of such accounts;
- iii. A tombstone advertisement in any publication with a general circulation in the United States, provided:
 - A. The publication has less than 20% of its circulation, calculated by aggregating the circulation of its U.S. and comparable non-U.S. editions, in the United States;
 - B. Such advertisement contains a legend to the effect that the securities have not been registered under the Act and may not be offered or sold in the United States (or to a U.S. person, if the advertisement relates to an offering under Category 2 or 3 (paragraph (b)(2) or (b)(3)) in Rule 903) absent registration or an applicable exemption from the registration requirements; and
 - C. Such advertisement contains no more information than:
 - 1. The issuer's name;
 - 2. The amount and title of the securities being sold;
 - 3. A brief indication of the issuer's general type of business;
 - 4. The price of the securities;
 - 5. The yield of the securities, if debt securities with a fixed (non- contingent) interest provision;
 - 6. The name and address of the person placing the advertisement, and whether such person is participating in the distribution;
 - 7. The names of the managing underwriters;
 - 8. The dates, if any, upon which the sales commenced and concluded;
 - 9. Whether the securities are offered or were offered by rights issued to security holders and, if so, the class of securities that are entitled or were entitled to subscribe, the subscription ratio, the record date, the dates (if any) upon which the rights were issued and expired, and the subscription price; and

10. Any legend required by law or any foreign or U.S. regulatory or self-regulatory authority;

- iv. Bona fide visits to real estate, plants or other facilities located in the United States and tours thereof conducted for a prospective investor by an issuer, a distributor, any of their respective affiliates or a person acting on behalf of any of the foregoing;
 - v. Distribution in the United States of a foreign broker-dealer's quotations by a third-party system that distributes such quotations primarily in foreign countries if:
 - A. Securities transactions cannot be executed between foreign broker-dealers and persons in the United States through the system; and
 - B. The issuer, distributors, their respective affiliates, persons acting on behalf of any of the foregoing, foreign broker-dealers and other participants in the system do not initiate contacts with U.S. persons or persons within the United States, beyond those contacts exempted under Rule 15a-6 under the Exchange Act;
 - vi. Publication by an issuer of a notice in accordance with Rule 135 or Rule 135c;
 - vii. Providing any journalist with access to press conferences held outside of the United States, to meetings with the issuer or selling security holder representatives conducted outside the United States, or to written press-related materials released outside the United States, at or in which a present or proposed offering of securities is discussed, if the requirements of Rule 135e are satisfied; and
 - viii. Publication or distribution of a research report by a broker or dealer in accordance with Rule 138(c) or Rule 139(b).
- d. *Distributor*. "Distributor" means any underwriter, dealer, or other person who participates, pursuant to a contractual arrangement, in the distribution of the securities offered or sold in reliance on this Regulation S (Rule 901 through Rule 905, and Preliminary Notes).
- e. *Domestic issuer/Foreign issuer*. "Domestic issuer" means any issuer other than a "foreign government" or "foreign private issuer" (both as defined in Rule 405). "Foreign issuer" means any issuer other than a "domestic issuer."
- f. *Distribution compliance period*. "Distribution compliance period" means a period that begins when the securities were first offered to persons other than distributors in reliance upon this Regulation S (Rule 901 through Rule 905, and Preliminary Notes) or the date of closing of the offering, whichever is later, and continues until the end of the period of time specified in the relevant provision of Rule 903, except that:
- 1. All offers and sales by a distributor of an unsold allotment or subscription shall be deemed to be made during the distribution compliance period;
 - 2. In a continuous offering, the distribution compliance period shall commence upon completion of the distribution, as determined and certified by the managing underwriter or person performing similar functions;

3. In a continuous offering of non-convertible debt securities offered and sold in identifiable tranches, the distribution compliance period for securities in a tranche shall commence upon completion of the distribution of such tranche, as determined and certified by the managing underwriter or person performing similar functions; and
4. That in a continuous offering of securities to be acquired upon the exercise of warrants, the distribution compliance period shall commence upon completion of the distribution of the warrants, as determined and certified by the managing underwriter or person performing similar functions, if requirements of Rule 903(b)(5) are satisfied.

g. *Offering restrictions.* "Offering restrictions" means:

1. Each distributor agrees in writing:
 - i. That all offers and sales of the securities prior to the expiration of the distribution compliance period specified in Category 2 or 3 (paragraph (b)(2) or (b)(3)) in Rule 903, as applicable, shall be made only in accordance with the provisions of Rule 903 or Rule 904; pursuant to registration of the securities under the Act; or pursuant to an available exemption from the registration requirements of the Act; and
 - ii. For offers and sales of equity securities of domestic issuers, not to engage in hedging transactions with regard to such securities prior to the expiration of the distribution compliance period specified in Category 2 or 3 (paragraph (b)(2) or (b)(3)) in Rule 903, as applicable, unless in compliance with the Act; and
2. All offering materials and documents (other than press releases) used in connection with offers and sales of the securities prior to the expiration of the distribution compliance period specified in Category 2 or 3 (paragraph (b)(2) or (b)(3)) in Rule 903, as applicable, shall include statements to the effect that the securities have not been registered under the Act and may not be offered or sold in the United States or to U.S. persons (other than distributors) unless the securities are registered under the Act, or an exemption from the registration requirements of the Act is available. For offers and sales of equity securities of domestic issuers, such offering materials and documents also must state that hedging transactions involving those securities may not be conducted unless in compliance with the Act. Such statements shall appear:
 - i. On the cover or inside cover page of any prospectus or offering circular used in connection with the offer or sale of the securities;
 - ii. In the underwriting section of any prospectus or offering circular used in connection with the offer or sale of the securities; and
 - iii. In any advertisement made or issued by the issuer, any distributor, any of their respective affiliates, or any person acting on behalf of any of the foregoing. Such statements may appear in summary form on prospectus cover pages and in advertisements.

h. *Offshore transaction.*

1. An offer or sale of securities is made in an "offshore transaction" if:

- i. The offer is not made to a person in the United States; and
- ii. Either:
 - A. At the time the buy order is originated, the buyer is outside the United States, or the seller and any person acting on its behalf reasonably believe that the buyer is outside the United States; or
 - B. For purposes of:
 - 1. Section Rule 903, the transaction is executed in, on or through a physical trading floor of an established foreign securities exchange that is located outside the United States; or
 - 2. Section Rule 904, the transaction is executed in, on or through the facilities of a designated offshore securities market described in paragraph (b) of this section, and neither the seller nor any person acting on its behalf knows that the transaction has been pre-arranged with a buyer in the United States.
- 2. Notwithstanding paragraph (h)(1) of this section, offers and sales of securities specifically targeted at identifiable groups of U.S. citizens abroad, such as members of the U.S. armed forces serving overseas, shall not be deemed to be made in "offshore transactions."
- 3. Notwithstanding paragraph (h)(1) of this section, offers and sales of securities to persons excluded from the definition of "U.S. person" pursuant to paragraph (k)(2)(vi) of this section or persons holding accounts excluded from the definition of "U.S. person" pursuant to paragraph (k)(2)(i) of this section, solely in their capacities as holders of such accounts, shall be deemed to be made in "offshore transactions."
- 4. Notwithstanding paragraph (h)(1) of this section, publication or distribution of a research report in accordance with Rule 138(c) or Rule 139(b) by a broker or dealer at or around the time of an offering in reliance on Regulation S will not cause the transaction to fail to be an offshore transaction as defined in this section.
- i. *Reporting issuer.* "Reporting issuer" means an issuer other than an investment company registered or required to register under the 1940 Act that:
 - 1. Has a class of securities registered pursuant to Section 12(b) or 12(g) of the Exchange Act or is required to file reports pursuant to Section 15(d) of the Exchange Act; and
 - 2. Has filed all the material required to be filed pursuant to Section 13(a) or 15(d) of the Exchange Act for a period of at least twelve months immediately preceding the offer or sale of securities made in reliance upon this Regulation S (Rule 901 through Rule 905, and Preliminary Notes) (or for such shorter period that the issuer was required to file such material).
- j. *Substantial U.S. market interest.*

1. "Substantial U.S. market interest" with respect to a class of an issuer's equity securities means:
 - i. The securities exchanges and inter-dealer quotation systems in the United States in the aggregate constituted the single largest market for such class of securities in the shorter of the issuer's prior fiscal year or the period since the issuer's incorporation; or
 - ii. 20 percent or more of all trading in such class of securities took place in, on or through the facilities of securities exchanges and inter-dealer quotation systems in the United States and less than 55 percent of such trading took place in, on or through the facilities of securities markets of a single foreign country in the shorter of the issuer's prior fiscal year or the period since the issuer's incorporation.
2. "Substantial U.S. market interest" with respect to an issuer's debt securities means:
 - i. Its debt securities, in the aggregate, are held of record (as that term is defined in Rule 12g5-1 under the Exchange Act and used for purposes of paragraph (j)(2) of this section) by 300 or more U.S. persons;
 - ii. \$1 billion or more of: The principal amount outstanding of its debt securities, the greater of liquidation preference or par value of its securities described in Rule 902(a)(1), and the principal amount or principal balance of its securities described in Rule 902(a)(2), in the aggregate, is held of record by U.S. persons; and
 - iii. 20 percent or more of: The principal amount outstanding of its debt securities, the greater of liquidation preference or par value of its securities described in Rule 902(a)(1), and the principal amount or principal balance of its securities described in Rule 902(a)(1), in the aggregate, is held of record by U.S. persons.
3. Notwithstanding paragraph (j)(2) of this section, substantial U.S. market interest with respect to an issuer's debt securities is calculated without reference to securities that qualify for the exemption provided by Section 3(a)(3) of the Act.

k. *U.S. person.*

1. "U.S. person" means:
 - i. Any natural person resident in the United States;
 - ii. Any partnership or corporation organized or incorporated under the laws of the United States;
 - iii. Any estate of which any executor or administrator is a U.S. person;
 - iv. Any trust of which any trustee is a U.S. person;
 - v. Any agency or branch of a foreign entity located in the United States;

- vi. Any non-discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary for the benefit or account of a U.S. person;
- vii. Any discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary organized, incorporated, or (if an individual) resident in the United States; and
- viii. Any partnership or corporation if:
 - A. Organized or incorporated under the laws of any foreign jurisdiction; and
 - B. Formed by a U.S. person principally for the purpose of investing in securities not registered under the Act, unless it is organized or incorporated, and owned, by accredited investors (as defined in Rule 501(a)) who are not natural persons, estates or trusts.

2. The following are not "U.S. persons":

- i. Any discretionary account or similar account (other than an estate or trust) held for the benefit or account of a non-U.S. person by a dealer or other professional fiduciary organized, incorporated, or (if an individual) resident in the United States;
- ii. Any estate of which any professional fiduciary acting as executor or administrator is a U.S. person if:
 - A. An executor or administrator of the estate who is not a U.S. person has sole or shared investment discretion with respect to the assets of the estate; and
 - B. The estate is governed by foreign law;
- iii. Any trust of which any professional fiduciary acting as trustee is a U.S. person, if a trustee who is not a U.S. person has sole or shared investment discretion with respect to the trust assets, and no beneficiary of the trust (and no settlor if the trust is revocable) is a U.S. person;
- iv. An employee benefit plan established and administered in accordance with the law of a country other than the United States and customary practices and documentation of such country;
- v. Any agency or branch of a U.S. person located outside the United States if:
 - A. The agency or branch operates for valid business reasons; and
 - B. The agency or branch is engaged in the business of insurance or banking and is subject to substantive insurance or banking regulation, respectively, in the jurisdiction where located; and
- vi. The International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development

Bank, the Asian Development Bank, the African Development Bank, the United Nations, and their agencies, affiliates and pension plans, and any other similar international organizations, their agencies, affiliates and pension plans.

- i. *United States*. "United States" means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

Rule 903 -- Offers or Sales of Securities by the Issuer, a Distributor, Any of Their Respective Affiliates, or Any Person Acting on Behalf of Any of the Foregoing; Conditions Relating to Specific Securities

- a. An offer or sale of securities by the issuer, a distributor, any of their respective affiliates, or any person acting on behalf of any of the foregoing, shall be deemed to occur outside the United States within the meaning of Rule 901 if:
 1. The offer or sale is made in an offshore transaction;
 2. No directed selling efforts are made in the United States by the issuer, a distributor, any of their respective affiliates, or any person acting on behalf of any of the foregoing; and
 3. The conditions of paragraph (b) of this section, as applicable, are satisfied.
- b. Additional Conditions.
 1. Category 1. No conditions other than those set forth in paragraph (a) apply to securities in this category. Securities are eligible for this category if:
 - i. The securities are issued by a foreign issuer that reasonably believes at the commencement of the offering that:
 - A. There is no substantial U.S. market interest in the class of securities to be offered or sold (if equity securities are offered or sold);
 - B. There is no substantial U.S. market interest in its debt securities (if debt securities are offered or sold);
 - C. There is no substantial U.S. market interest in the securities to be purchased upon exercise (if warrants are offered or sold); and
 - D. There is no substantial U.S. market interest in either the convertible securities or the underlying securities (if convertible securities are offered or sold);
 - ii. The securities are offered and sold in an overseas directed offering, which means:

- A. An offering of securities of a foreign issuer that is directed into a single country other than the United States to the residents thereof and that is made in accordance with the local laws and customary practices and documentation of such country; or
 - B. An offering of non-convertible debt securities of a domestic issuer that is directed into a single country other than the United States to the residents thereof and that is made in accordance with the local laws and customary practices and documentation of such country, provided that the principal and interest of the securities (or par value, as applicable) are denominated in a currency other than U.S. dollars and such securities are neither convertible into U.S. dollar-denominated securities nor linked to U.S. dollars (other than through related currency or interest rate swap transactions that are commercial in nature) in a manner that in effect converts the securities to U.S. dollar-denominated securities.
 - iii. The securities are backed by the full faith and credit of a foreign government; or
 - iv. The securities are offered and sold to employees of the issuer or its affiliates pursuant to an employee benefit plan established and administered in accordance with the law of a country other than the United States, and customary practices and documentation of such country, provided that:
 - A. The securities are issued in compensatory circumstances for bona fide services rendered to the issuer or its affiliates in connection with their businesses and such services are not rendered in connection with the offer or sale of securities in a capital-raising transaction;
 - B. Any interests in the plan are not transferable other than by will or the laws of descent or distribution;
 - C. The issuer takes reasonable steps to preclude the offer and sale of interests in the plan or securities under the plan to U.S. residents other than employees on temporary assignment in the United States; and
 - D. Documentation used in connection with any offer pursuant to the plan contains a statement that the securities have not been registered under the Act and may not be offered or sold in the United States unless registered or an exemption from registration is available.
- 2. Category 2. The following conditions apply to securities that are not eligible for Category 1 (paragraph (b)(1)) of this section and that are equity securities of a reporting foreign issuer, or debt securities of a reporting issuer or of a non-reporting foreign issuer.
 - i. Offering restrictions are implemented;
 - ii. The offer or sale, if made prior to the expiration of a 40-day distribution compliance period, is not made to a U.S. person or for

the account or benefit of a U.S. person (other than a distributor); and

- iii. Each distributor selling securities to a distributor, a dealer, as defined in section 2(a)(12) of the Act, or a person receiving a selling concession, fee or other remuneration in respect of the securities sold, prior to the expiration of a 40-day distribution compliance period, sends a confirmation or other notice to the purchaser stating that the purchaser is subject to the same restrictions on offers and sales that apply to a distributor.
3. Category 3. The following conditions apply to securities that are not eligible for Category 1 or 2 (paragraph (b)(1) or (b)(2)) of this section:
- i. Offering restrictions are implemented;
 - ii. In the case of debt securities:
 - A. The offer or sale, if made prior to the expiration of a 40-day distribution compliance period, is not made to a U.S. person or for the account or benefit of a U.S. person (other than a distributor); and
 - B. The securities are represented upon issuance by a temporary global security which is not exchangeable for definitive securities until the expiration of the 40-day distribution compliance period and, for persons other than distributors, until certification of beneficial ownership of the securities by a non-U.S. person or a U.S. person who purchased securities in a transaction that did not require registration under the Act;
 - iii. In the case of equity securities:
 - A. The offer or sale, if made prior to the expiration of a one-year distribution compliance period, is not made to a U.S. person or for the account or benefit of a U.S. person (other than a distributor); and
 - B. The offer or sale, if made prior to the expiration of a one-year distribution compliance period, is made pursuant to the following conditions:
 1. The purchaser of the securities (other than a distributor) certifies that it is not a U.S. person and is not acquiring the securities for the account or benefit of any U.S. person or is a U.S. person who purchased securities in a transaction that did not require registration under the Act;
 2. The purchaser of the securities agrees to resell such securities only in accordance with the provisions of this Regulation S (Rule 901 through Rule 905, and Preliminary Notes), pursuant to registration under the Act, or pursuant to an available exemption from registration; and agrees not to engage in hedging transactions with regard to such securities unless in compliance with the Act;

3. The securities of a domestic issuer contain a legend to the effect that transfer is prohibited except in accordance with the provisions of this Regulation S (Rule 901 through Rule 905, and Preliminary Notes), pursuant to registration under the Act, or pursuant to an available exemption from registration; and that hedging transactions involving those securities may not be conducted unless in compliance with the Act;
 4. The issuer is required, either by contract or a provision in its bylaws, articles, charter or comparable document, to refuse to register any transfer of the securities not made in accordance with the provisions of this Regulation S (Rule 901 through Rule 905, and Preliminary Notes), pursuant to registration under the Act, or pursuant to an available exemption from registration; provided, however, that if the securities are in bearer form or foreign law prevents the issuer of the securities from refusing to register securities transfers, other reasonable procedures (such as a legend described in paragraph (b)(3)(iii)(B)(3) of this section) are implemented to prevent any transfer of the securities not made in accordance with the provisions of this Regulation S; and
- iv. Each distributor selling securities to a distributor, a dealer (as defined in section 2(a)(12) of the Act), or a person receiving a selling concession, fee or other remuneration, prior to the expiration of a 40-day distribution compliance period in the case of debt securities, or a one-year distribution compliance period in the case of equity securities, sends a confirmation or other notice to the purchaser stating that the purchaser is subject to the same restrictions on offers and sales that apply to a distributor.
4. **Guaranteed securities.** Notwithstanding paragraphs (b)(1) through (b)(3) of this section, in offerings of debt securities fully and unconditionally guaranteed as to principal and interest by the parent of the issuer of the debt securities, only the requirements of paragraph (b) of this section that are applicable to the offer and sale of the guarantee must be satisfied with respect to the offer and sale of the guaranteed debt securities.
 5. **Warrants.** An offer or sale of warrants under Category 2 or 3 (paragraph (b)(2) or (b)(3)) of this section also must comply with the following requirements:
 - i. Each warrant must bear a legend stating that the warrant and the securities to be issued upon its exercise have not been registered under the Act and that the warrant may not be exercised by or on behalf of any U.S. person unless registered under the Act or an exemption from such registration is available;
 - ii. Each person exercising a warrant is required to give:
 - A. Written certification that it is not a U.S. person and the warrant is not being exercised on behalf of a U.S. person; or

- B. A written opinion of counsel to the effect that the warrant and the securities delivered upon exercise thereof have been registered under the Act or are exempt from registration thereunder; and
- iii. Procedures are implemented to ensure that the warrant may not be exercised within the United States, and that the securities may not be delivered within the United States upon exercise, other than in offerings deemed to meet the definition of "offshore transaction" pursuant to Rule 902(h), unless registered under the Act or an exemption from such registration is available.

Rule 904 -- Offshore Resales

- a. An offer or sale of securities by any person other than the issuer, a distributor, any of their respective affiliates (except any officer or director who is an affiliate solely by virtue of holding such position), or any person acting on behalf of any of the foregoing, shall be deemed to occur outside the United States within the meaning of Rule 901 if:
 - 1. The offer or sale are made in an offshore transaction;
 - 2. No directed selling efforts are made in the United States by the seller, an affiliate, or any person acting on their behalf; and
 - 3. The conditions of paragraph (b) of this section, if applicable, are satisfied.
- b. Additional conditions.
 - 1. Resales by dealers and persons receiving selling concessions. In the case of an offer or sale of securities prior to the expiration of the distribution compliance period specified in Category 2 or 3 (paragraph (b)(2) or (b)(3)) of Rule 903, as applicable, by a dealer, as defined in Section 2(a)(12) of the Act, or a person receiving a selling concession, fee or other remuneration in respect of the securities offered or sold:
 - i. Neither the seller nor any person acting on its behalf knows that the offeree or buyer of the securities is a U.S. person; and
 - ii. If the seller or any person acting on the seller's behalf knows that the purchaser is a dealer, as defined in Section 2(a)(12) of the Act, or is a person receiving a selling concession, fee or other remuneration in respect of the securities sold, the seller or a person acting on the seller's behalf sends to the purchaser a confirmation or other notice stating that the securities may be offered and sold during the distribution compliance period only in accordance with the provisions of this Regulation S (Rule 901 through Rule 905, and Preliminary Notes); pursuant to registration of the securities under the Act; or pursuant to an available exemption from the registration requirements of the Act.
 - 2. Resales by certain affiliates. In the case of an offer or sale of securities by an officer or director of the issuer or a distributor, who is an affiliate of the

issuer or distributor solely by virtue of holding such position, no selling concession, fee or other remuneration is paid in connection with such offer or sale other than the usual and customary broker's commission that would be received by a person executing such transaction as agent.

Rule 905 -- Resale Limitations

Equity securities of domestic issuers acquired from the issuer, a distributor, or any of their respective affiliates in a transaction subject to the conditions of Rule 901 or Rule 903 are deemed to be "restricted securities" as defined in Rule 144. Resales of any of such restricted securities by the offshore purchaser must be made in accordance with this Regulation S (Rule 901 through Rule 905, and Preliminary Notes), the registration requirements of the Act or an exemption therefrom. Any "restricted securities," as defined in Rule 144, that are equity securities of a domestic issuer will continue to be deemed to be restricted securities, notwithstanding that they were acquired in a resale transaction made pursuant to Rule 901 or Rule 904.

