

INFORMATIONAL BULLETIN

TO: Private Placement Issuers and Securities Professionals

RE: State filing requirements for Issuers Relying on the Securities Act of 1933, Regulation D, Rule 506 beginning **March 16, 2009**

FROM: North Carolina Department of the Secretary of State, Securities Division

DATE: March 13, 2009

Intent of this Informational Bulletin

The intent of this bulletin is to advise you of revisions to the filing requirements for an issuer offering or selling securities in North Carolina in reliance on N.C.G.S. §78A-31(b) and federal Regulation D, Rule 506. Information regarding filing Form D with the SEC is available at <http://www.sec.gov/divisions/corpfin/formdfiling.htm>. In addition, the SEC issued a Notice on February 17 regarding changes brought about by the March 16 electronic filing mandate. It is available at <http://www.sec.gov/info/edgar/ednews/efornd.htm>.

In 2008, the U.S. Securities and Exchange Commission (SEC) adopted revisions to Form D and the rules for filing the form. See Securities Act Release No. 33-8891 (Feb. 6, 2008), *available at* <http://www.sec.gov/rules/final/2008/33-8891.pdf>. The revised rules allow Form D to be filed electronically with the SEC on a voluntary basis from September 15, 2008 through March 15, 2009. **Beginning March 16, 2009 electronic filing is mandatory for all Form D filings with the SEC.**

INSTRUCTIONS ON HOW TO FILE FORM D IN THIS STATE

What to file with North Carolina Department of the Secretary of State, Securities Division

Beginning March 16, 2009, an issuer offering or selling securities in reliance on Regulation D, Rule 506 and N.C.G.S. §78A-31(b) shall file with the North Carolina Department of the Secretary of State, Securities Division:

- A paper copy of the notice of sale on Form D that was filed electronically with the SEC (the form is available at <http://www.sec.gov/about/forms/formd.pdf>) **and**
- The requisite fee of \$350.

How to file with North Carolina Department of the Secretary of State, Securities Division

A paper filing shall be submitted to the North Carolina Department of the Secretary of State, Securities Division at N.C. Department of the Secretary of State, P.O. Box 29622, Raleigh, N.C. 27626-0622. All filings shall be submitted with the appropriate filing fee \$350.

In order to make an electronic filing on Form D with the SEC, an issuer will need to obtain an EDGAR access code. If the issuer does not already have an EDGAR access code, the authentication process should be reviewed in advance of an anticipated filing of Form D because the authorization process could be time consuming, and result in the late filing of a notice in this state. EDGAR access codes may be obtained by following the instructions at <https://www.filermanagement.edgarfiling.sec.gov>. For additional information on how to file with the SEC, go to <http://www.sec.gov/divisions/corpfin/formdfunding.htm>.

When to file with the North Carolina Department of the Secretary of State, Securities Division

The Form D shall be filed no later than 15 calendar days after the first sale of securities in North Carolina unless the 15th day falls on a Saturday, Sunday or holiday, in which case the due date is the first business day following.

When to file amendments with the North Carolina Department of the Secretary of State, Securities Division

Issuers must file an amendment in accordance with requirements set forth in 18 NCAC 06. 1211, but may voluntarily file an amendment to a Form D at any time. Generally, amendments need to be filed to correct material mistakes of fact or errors on a previously filed Form D as soon as practicable after discovering the mistake or error. The SEC's requirements for filing an amendment to Form D are found in the Code of Federal Regulations, 17 CFR 230.503(a)(1)-(4). An amendment to a previously filed Form D must provide current information in response to all requirements of the notice of sale on Form D regardless of why the amendment is filed.

Contact the North Carolina Department of the Secretary of State, Securities Division for help with questions regarding filing requirements

Requests for additional information or questions regarding this Bulletin may be directed to the Director of Registration at (919) 733-3924 or send an e-mail to secdiv@sosnc.com or view our webpage at www.sosnc.com. As this Bulletin does not provide filing requirements for Issuers relying on Regulation D, Rule 504 and/or Rule 505, if you are relying on Regulation D, Rules 504 and/or 505, please contact the Director of Registration at (919) 733-3924 for those filing requirements.