

## **Manual of Publicly Available Telephone Interpretations**

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### **K. REGULATION S-B**

1. Item 10 of Regulation S-B

The use of Form S-1 for an issuer's initial public offering does not evidence an election to file on either the Regulation S-K or Regulation S-B reporting system. Rather, the first Exchange Act periodic report filed after the effectiveness of the Form S-1 would evidence the election.

2. Item 10 of Regulation S-B

The filing of a Form 8-A does not evidence an election to file on either the Regulation S-K or the Regulation S-B reporting system, since that form does not differentiate between the two systems. Rather, the first Exchange Act periodic report filed after the Form 8-A would evidence the election.

3. \*\* Item 10(a) of Regulation S-B; Rule 405 \*\*

A "small business issuer" is defined as a company with revenues of less than \$25,000,000 and whose public float (the aggregate market value of the outstanding voting and non-voting common equity held by non-affiliates) does not exceed \$25,000,000. For purposes of determining an issuer's public float, book value may substitute for market value where there is no market for a company's securities.

4. Item 10(a) of Regulation S-B

In calculating an issuer's revenues for purposes of determining the application of the definition of "small business issuer," the issuer should include all revenues on a consolidated basis. As such, a holding company would only meet the terms of the definition only if has less than \$25 million in consolidated revenues.

5. Item 103 of Regulation S-B

Item 103 of Regulation S-B should be read to include the "material" requirement of Item 103 of Regulation S-K.

6. Item 403 of Regulation S-B

A small business issuer inquired whether the names and addresses of management, who are beneficial owners of the company's securities, is required to be disclosed under Item 403 of Regulation S-B. Consistent with Item 403 of Regulation S-K, the Division staff advised the issuer that this disclosure was not required.

7. **Item 404 of Regulation S-B**

The instructions to Item 404(c) of Regulation S-K with respect to banks, etc., can be read into 404(c) of Regulation S-B.

8. **Item 511 of Regulation S-B**

Item 511 of Regulation S-B was not intended to broaden the disclosure requirement of Item 511 of Regulation S-K with respect to Director and Officer indemnification insurance expenses. Only those D&O insurance expenses incurred "in connection with the offering" need to be disclosed.