

**191—50.80(502) Uniform limited offering exemption.**

**50.80(1)** This rule is the NASAA Uniform Limited Offering Exemption as adopted in September 1983, with amendments adopted through April 29, 1989, without any of the footnotes and may be cited as the “Uniform Limited Offering Exemption.”

*a.* Nothing in this exemption is intended to or should be in any way construed as relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of Iowa Code chapter 502 and these rules.

*b.* In view of the objective of this rule and the purposes and policies underlying Iowa Code chapter 502, the exemption is not available to any issuer for any transaction which, although in technical compliance with this rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this rule.

*c.* Nothing in this rule is intended to relieve registered broker-dealers or agents from the due diligence, suitability, “know your customer” standards, or any other requirements of law otherwise applicable to such registered persons.

**50.80(2)** Under the authority delegated to the administrator to promulgate rules by Iowa Code sections 502.203 and 502.605(1), the following transaction is exempt from the registration provisions of the Act:

*a.* Any offer or sale of securities offered or sold in compliance with the Securities Act of 1933, Regulation D, Rule 230.505, including any offer or sale made exempt by Rule 508(a), as made effective in Release No. 33-6389 and as amended by Release Nos. 33-6437, 33-6663, 33-6758, and 33-6825, and which satisfies all of the following:

(1) No commission, fee or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in Iowa unless the person is registered under Iowa Code section 502.406 or is exempt from registration as a broker-dealer by Iowa Code section 502.401(2).

(2) It is a defense to a violation of this subrule if the issuer sustains the burden of proof to establish that the issuer did not know, and in the exercise of reasonable care could not have known, that the person receiving a commission, fee, or other remuneration was not appropriately registered in Iowa.

*b.* No exemption under this rule is available for the securities of any issuer if any of the parties described in the Securities Act of 1933, Regulation A, Rule 230.262(a), (b), or (c):

(1) Has filed a registration statement subject to a currently effective registration stop order entered under any state’s securities law within five years prior to filing the notice required under this exemption;

(2) Has been convicted, within five years prior to filing the notice required under this exemption, of any felony or misdemeanor regarding the offer, purchase or sale of any security or any felony involving fraud or deceit including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(3) Is currently subject to any state administrative enforcement order or judgment entered by that state’s securities administrator within five years prior to filing the notice required under this exemption, or is currently subject to any state’s administrative enforcement order or judgment in which fraud or deceit including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to filing the notice required under this exemption;

(4) Is currently subject to any state administrative enforcement order or judgment prohibiting, denying, or revoking the use of any exemption from registration regarding the offer, purchase or sale of securities; or

(5) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or permanently restraining or enjoining the party from engaging in or continuing any conduct or practice regarding the purchase or sale of any security, or involving the making of any false filing with the state entered within five years prior to filing the notice required under this exemption.

(6) The disqualification of a person under paragraph 50.80(2)“*b*” may be waived by the administrator if the order, conviction, judgment or decree relating to the person’s disqualification has

been disclosed in writing to the administrator and the administrator has determined, for good cause shown, that the public interest no longer requires the person to be disqualified.

(7) It is a defense to a violation of this subrule if the issuer sustains the burden of proof to establish that the issuer did not know, and in the exercise of reasonable care could not have known, that a disqualification under this subrule existed.

*c.* The issuer shall file with the administrator a notice on Form D (17 CFR 239.500) not later than 15 days following the date of the first sale in Iowa. This notice shall be accompanied by:

- (1) A copy of any written information furnished to investors;
- (2) A Form U-2 consent to service of process; and
- (3) A \$100 filing fee.

*d.* Filing occurs on the earlier of:

- (1) The date the notice is received by the administrator; or
- (2) The date the documents are mailed with the United States Postal Service by registered or certified mail addressed to the administrator at the Iowa Securities and Regulated Industries Bureau, 340 Maple Street, Des Moines, Iowa 50319-0066.

*e.* In all sales to nonaccredited investors in Iowa, one of the following conditions must be satisfied or the issuer and any person acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that one of the following conditions is satisfied:

(1) The investment is suitable for the purchaser based upon facts, if any, disclosed by the purchaser regarding the purchaser's other security holdings, financial situation and needs. For this condition only, it is presumed that if the investment does not exceed 10 percent of the investor's net worth, it is suitable.

(2) The purchaser, either alone or with a purchaser's representative, has such knowledge and experience in financial and business matters that the purchaser is, or they are, capable of evaluating the merits and risks of the prospective investment.

**50.80(3)** The failure to comply with a term, condition or requirement of subparagraph 50.80(2) "a"(1), paragraph 50.80(2) "c" or paragraph 50.80(2) "e" will not result in loss of the exemption from the requirements of Iowa Code section 502.301 for any offer or sale to a particular individual or entity if the person relying on the exemption shows:

*a.* The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity;

*b.* The failure to comply was insignificant regarding the offering as a whole; and

*c.* A good-faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of subparagraph 50.80(2) "a"(1), paragraph 50.80(2) "c" and paragraph 50.80(2) "e."

**50.80(4)** Where an exemption is established only through reliance upon subrule 50.80(3), the failure to comply is actionable under Iowa Code sections 502.603 and 502.604.

**50.80(5)** Transactions exempt under this rule may not be combined with offers and sales exempt under any other rule or provision of the Act. However, nothing in this limitation shall act as an election. Should for any reason the offer and sale fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.

**50.80(6)** The administrator may, by rule or order, increase the number of purchasers or waive any other conditions of this exemption.

This rule is intended to implement Iowa Code section 502.203.