

Securities Act Rules

QUESTIONS AND ANSWERS OF GENERAL APPLICABILITY

Section 277. 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

Question 277.02

Question: May an issuer rely on Rule 903(b)(1)(ii) for an offering of securities in more than one country that is part of the European Union?

Answer: Yes. Regulation S was adopted before the integration of the capital markets within the European Union as a result of application of EU-wide laws and regulations relating to prospectuses, transparency, trading and other matters. Given that level of integration, issuers may rely on Rule 903(b)(1)(ii) to the extent the local laws and customary practices and documentation are those of the European Union rather than of a single country within the European Union. [December 8, 2016]

Question 277.03

Question: May an issuer rely on Rule 903(b)(1)(iv) for an offering of securities to employees if the laws, customary practices and documentation are those of the European Union rather than of a country other than the United States?

Answer: Yes, for the reasons discussed in [Securities Act Rules CDI 277.02](#). [December 8, 2016]

Question 277.04

Question: In adopting Regulation S, the Commission stated that persons relying on the second issuer safe harbor [now referred to as Category 2] must "ensure (by whatever means they choose) that any non-distributor to whom they sell securities is a non-U.S. person and is not purchasing for the account or benefit of a U.S. person." The Commission also noted that the "safe harbor protection would not be available where offers and sales were made nominally to non-U.S. persons to evade the restrictions." See Securities Act Release No. 6863 (April 24, 1990). May a person seeking to rely on the Category 3 safe harbor under Rule 903 apply this guidance in establishing that offers and sales are not made to a U.S. person or for the account or benefit of a U.S. person?

Answer: Yes. [December 8, 2016]

Question 277.05

Question: Can the certification and agreement required under Regulation S (such as those required under Category 3 and those required with respect to warrants) be provided electronically?

Answer: There are no specific requirements under Regulation S relating to the manner in which certifications and agreements are made. As a result, issuers and distributors may use electronic procedures to obtain the certifications and agreements. Such processes may be implemented by third parties and issuers and distributors may rely on those procedures to the same extent and in the same manner as when certifications and agreements are obtained in paper. [December 8, 2016]

Question 277.06

Question: Does Rule 903(b)(4) relating to guaranteed debt securities apply to offerings of debt securities that are guaranteed by subsidiaries of a parent company guarantor or parent company issuer?

Answer: Yes. Rule 903(b)(4) would apply in situations when the parent company is the issuer (or a co-issuer) of the debt securities and one or more subsidiaries is a guarantor, and when the parent company is a guarantor and there are one or more subsidiaries which are also guarantors of the securities, in each case as long as the payment obligation of the parent company is full and unconditional. [December 8, 2016]