

**RULES  
OF  
THE GEORGIA COMMISSIONER OF SECURITIES**

**CHAPTER 590-4-3  
REGISTRATION OF SECURITIES**

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**590-4-3-.01 Filing of Original Registration Statement; Power of Attorney.**

(1) The completed registration statement, together with exhibits and all other documents included as a part thereof, shall be submitted to the Commissioner.

(2) The registration statement shall be completed by the Applicant or an authorized Officer of an Applicant.

(3) If any name is signed on a registration statement pursuant to a power of attorney, then copies of the power of attorney shall be filed with the Commissioner, together with the registration statement. In addition, if the name of any Officer signing such registration statement on behalf of the Applicant or attesting the Applicant's seal is signed pursuant to a power of attorney, then certified copies of a resolution of the Applicant's board of directors authorizing the signature shall also be filed with the Commissioner together with such registration statement.

(4) The completed registration statement, together with exhibits and all other documents included as a part thereof, required by this Rule may be made electronically on a form adopted by the Commissioner.

**Authority: O.C.G.A. Secs. 10-5-24, 10-5-70, 10-5-74.**

### **590-4-3-.02 Determination of Filing Date; Abandonment of Registration Statements.**

(1) A registration statement required by Section 10-5-22 or 10-5-23 of the Act is considered filed when the Commissioner receives the registration statement and required filing fees, as prescribed from time to time by order of the Commissioner.

(2) Any registration statement filed pursuant to Section 10-5-22 or 10-5-23 of the Act is deficient if any of the following conditions exist:

(a) The registration statement is not in proper form;

(b) The registration statement does not comply with the applicable provisions of Section 10-5-22, 10-5-23, 10-5-24 or any other provision of the Act; or

(c) The registration statement does not comply with any other applicable state or federal law, statute, rule or regulation.

(3) When a registration statement is found to be deficient, the Commissioner may send a deficiency letter notifying the Applicant of such deficiencies. The registration statement shall be deemed to be abandoned by the Applicant without further action by the Commissioner if the Applicant fails to amend the registration statement to address such deficiencies within thirty (30) days following the date of such deficiency letter.

**Authority: O.C.G.A. Secs. 10-5-70, 10-5-74.**

### **590-4-3-.03 Paper, Printing, and Language.**

(1) Unless otherwise permitted by the Commissioner, the registration statement and all papers and documents filed as a part thereof shall be in times new roman type or its substantial equivalent, at least as large and as legible as 10-point modern type, except that financial statements and other tabular data, including tabular data in notes, may be in times new roman type or its substantial equivalent at least as large and as legible as 8-point modern type.

(2) The registration statement shall be in the English language. If any exhibit or other document filed with the registration statement is in a foreign language, it shall be accompanied by a translation into the English language accompanied by a sworn affidavit attesting to the accuracy of the translation.

**Authority: O.C.G.A. Secs. 10-5-70, 10-5-74.**

### **590-4-3-.04 Contents of Registration Statements.**

(1) Except as provided in subsection (2) of this Rule, every registration statement filed under Section 10-5-22 or Section 10-5-23 of the Act shall be on Form U-1, as made available on

NASAA's website, or electronically in a form containing substantially similar disclosures, as permitted by order of the Commissioner.

(2) The registration statement to be filed under Section 10-5-23 of the Act in connection with any offer or sale of securities offered or sold in compliance with SEC Rule 504 adopted pursuant to the Securities Act of 1933 or Section (4)(5), 15 U.S.C. § 77d(5), of the Securities Act of 1933, and for which a Form D has been filed with the SEC shall consist of the most recently filed Form D, as filed with the SEC, in lieu of the registration statement required in subsection (1) of this Rule. A filing under this subsection shall be made electronically, as permitted by order of the Commissioner.

**Authority: O.C.G.A. Secs. 10-5-70, 10-5-74.**

### **590-4-3-.05 General Requirements of Prospectus.**

The following general requirements shall apply to every prospectus required to be filed with the Commissioner, unless otherwise provided for.

(1) Unless otherwise permitted by the Commissioner, the body of the prospectus and all notes to financial statements and other tabular data included therein shall be in times new roman type or its substantial equivalent, at least as large and as legible as 10-point modern type, except that financial statements and other tabular data, including tabular data in notes, may be in times new roman type or its substantial equivalent, at least as large and as legible as 8-point modern type. A prospectus in the final form approved by the Commissioner shall be deemed to have met all requirements of this subsection.

(2) Photographs or conceptions or renderings by artists, architects or engineers are only permitted to be included in a prospectus to the extent they are necessary for a fair understanding of the subject and provided that such photographs, conceptions and renderings are not misleading. Accurate maps or surveys are permissible where appropriate. Established corporate symbols or trademarks may be used, provided they do not create misleading impressions.

(3) The information set forth in a prospectus should be presented in a clear and understandable fashion. All information contained in a prospectus shall be set forth under appropriate captions or headings reasonably indicative of the principal subject matter set forth. Except as to financial statements and other tabular data, all information set forth in a prospectus shall be divided into reasonably short paragraphs or sections. The information required in a prospectus need not follow the order of the items or topics set forth in these rules. The information shall not, however, be set forth in a manner that obscures any of the required information or any information necessary to keep the required information from being incomplete or misleading.

(4) The prospectus shall include all material information not expressly required that is necessary under the circumstances to make the statements not misleading and shall include all information material to an evaluation of the offered security.

**Authority: O.C.G.A. Secs. 10-5-53, 10-5-70, 10-5-74.**

### **590-4-3-.06 Delivery and Contents of Prospectus.**

(1) Filing. Each registration statement filed under the Act shall include a prospectus to be used in connection with the proposed securities offering.

(2) Prospectus Delivery Requirements. As a condition of registration, an Applicant shall comply with the following:

(a) A person offering or selling a security under a registration statement filed pursuant to Section 10-5-23 of the Act shall deliver a copy of the final prospectus to each prospective purchaser before the confirmation of a sale made by or for the account of the person. Each subscription agreement shall contain a statement by the purchaser that the purchaser has received a copy of the prospectus.

(b) A person offering or selling a security under a registration statement filed pursuant to Section 10-5-22 of the Act shall deliver a copy of the prospectus as and to the extent required by the Securities Act of 1933.

(3) Form and Content.

(a) General Requirements. Each prospectus required to be included in a registration statement pursuant to this Rule shall satisfy the requirements of Rule 590-4-3-.05, unless the Commissioner waives or modifies such requirements.

(b) Registration by Coordination. Each prospectus included in a registration statement filed pursuant to Section 10-5-22 of the Act shall include the information required in Part I of the registration statement filed (or to be filed) by the issuer under the Securities Act of 1933 relating to such proposed securities offering, unless the Commissioner waives or modifies such requirements pursuant to Section 10-5-26 of the Act.

(c) Registration by Qualification. Each prospectus included in a registration statement filed pursuant to Section 10-5-23 of the Act, including a prospectus that forms a part of a registration statement filed pursuant to Rule 590-4-3-.04(2), shall include the following information as applicable, unless the Commissioner waives or modifies such requirements pursuant to Section 10-5-26 of the Act:

1. If the proposed offering to be registered under Section 10-5-23 of the Act is made in compliance with Regulation A under the Securities Act of 1933, then the information in the prospectus required by this rule shall be the information required by the then current version of Form 1-A under Regulation A;

2. If the proposed offering to be registered under Section 10-5-23 of the Act is made in compliance with SEC Rule 504 adopted pursuant to the Securities Act of 1933 or Section 4(5), 15 U.S.C. § 77d(5), of the Securities Act of 1933, then the information in the prospectus required by this rule shall be in the information required by the then current version of Form U-7 (Small Company Offering Registration Form), available on NASAA's website; or

3. In all other cases, such information as may be ordered by the Commissioner.

**Authority: O.C.G.A. Secs. 10-5-23, 10-5-70, 10-5-74.**

**590-4-3-.07 Amendments to Registration Statements.**

If at any time during which a registration statement is effective under the Act, any statement contained in such registration statement becomes materially inaccurate or misleading as of that time, then the Applicant shall within five (5) days thereafter file with the Commissioner a sworn statement of the changes in the circumstances and the amendments necessary to render such registration statement complete and accurate and not misleading. The sworn statement of changes shall become a part of such registration statement. Within five (5) days thereafter, the Commissioner shall determine whether to order that such statement of the changes be included in the prospectus under Rules 590-4-3-.05 and 590-4-3-.06. If the Commissioner so orders, such statement of changes shall be included into such prospectus by way of addendum or supplement and delivered pursuant to Rule 590-4-3.06(2).

**Authority: O.C.G.A. Secs. 10-5-53, 10-5-70, 10-5-74.**

**590-4-3-.08 Petition for Waiver or Modification of Requirements.**

(1) An Applicant may petition the Commissioner to exercise his or her authority under Section 10-5-26 of the Act to waive or modify any of the requirements permitted to be so waived or modified pursuant to Section 10-5-26 of the Act. Such petition shall:

(a) Be sworn;

(b) Describe the requirements that the Applicant seeks be waived or modified and the requested waiver or modification thereof; and

(c) State the basis for the Applicant's belief that such waiver or modification is consistent with the protection of investors.

(2) Based on the representations set forth in such petition and only to the extent that such representations are true and complete, the Commissioner may grant the waiver or modification so requested by the Applicant if the Commissioner concludes such waiver or modification is permitted by Section 10-5-26 of the Act and is consistent with the protection of investors.

(3) The Commissioner may decline to rule on any petition filed under this Rule 590-4-3-.08.

**Authority: O.C.G.A. Secs. 10-5-26.**

### **590-4-3-.09 Issuer's Quarterly and Annual Reports.**

(1) In addition to the financial statements required to be filed pursuant to Section 10-5-23 of the Act, every issuer who has registered securities for sale in this state pursuant to Code Section 10-5-23 of the Act shall, for a period of twelve (12) months following the effective date of such registration statement, or any renewals thereof, file with the Commissioner:

(a) Within sixty (60) days of the close of each fiscal quarter of the issuer of the securities registered, except the last fiscal quarter of each fiscal year, the following financial statements:

1. Consolidated statements of financial position (i.e., balance sheet), income, and cash flows of the issuer and its subsidiaries for each fiscal quarter;

2. Consolidated statement of shareholders' equity for the issuer and its subsidiaries for each such fiscal quarter. Such statement may contain the items specified in Form 10-Q promulgated by the SEC under the Securities Exchange Act of 1934.

(b) Within ninety (90) days of the close of such issuer's fiscal year the following financial statements:

1. Consolidated statements of financial position (i.e., balance sheet), income, and cash flows for the issuer and its subsidiaries for such fiscal year; and

2. A consolidated statement of shareholders' equity of the issuer and its subsidiaries for each such fiscal year. Such statement may contain the items specified in Form 10-K, promulgated by the SEC under the Securities Exchange Act of 1934.

(c) If a substantial part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements that would be required in subparagraphs (a) and (b) above if that business were the issuer; provided, however, if the issuer does not compile its financial statements in the normal course of its business on a consolidated basis, then it may furnish, in lieu of the consolidated financial statements required in subparagraphs (a) and (b) above and this subparagraph (c), individual financial statements for it and its majority-owned subsidiaries.

(2) The financial statements required by this Rule 590-4-3-.09 to be filed with the Commissioner may be filed electronically, provided that the Commissioner has established procedures for electronic filing.

(3) A copy of each financial statement filed with the Commissioner pursuant to this Rule 590-4-3-.09 shall be delivered promptly following such filing with the Commissioner to each investor in this State who purchased securities pursuant to the registration statement.

**Authority: O.C.G.A. Secs. 10-5-24, 10-5-70.**

#### **590-4-3-.10 Financial Statements.**

(a) Except as otherwise expressly provided in Rule 590-4-3-.09, as to definitions, qualifications of accountants, contents of accountant's certificates, requirements of consolidated or combined statements, and the form and content of financial statements (including any prospective financial statements or pro forma financial statements), the Commissioner shall apply Regulation S-X as adopted by the SEC in its most recent form as of the date of the filing of the registration statement, prospectus or other document containing such financial statements as required by the Act or any rule adopted by the Commissioner thereunder.

(b) The Commissioner may, upon the written request of the Applicant and where consistent with the protection of investors, permit the omission of one or more financial statements required under Rule 590-4-3-.09, or the filing in substitution therefor of an appropriate comparable character. The Commissioner may also, by written notice, require the filing of other financial statements in addition to, or in substitution for, the financial statements in any case where the financial statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

**Authority: O.C.G.A. Secs. 10-5-24, 10-5-70, 10-5-74.**

#### **590-4-3-.11 Renewals of Registration Statements.**

A registration statement filed pursuant to the Act may be renewed for additional one year periods if the issuer files with the Commissioner at least thirty (30) days prior to anniversary of effective date of such registration statement an updated prospectus prepared in accordance with the rules adopted by the Commissioner containing information as of a date no more than 90 days prior the filing date thereof together with the renewal fee prescribed by the Commissioner. Unless the Commissioner issues an order specifying otherwise, the renewal of such registration statement becomes effective on the anniversary of expiration of the original registration statement, and such renewed registration statement shall be effective for one year.

**Authority: O.C.G.A. Secs. 10-5-24, 10-5-70, 10-5-74.**

#### **590-4-3-.12 Filing of Sales and Advertising Literature Relating to Securities Offerings Registered by Qualification.**

(1) Except as provided in this Rule, Sales and Advertising Literature used or proposed to be used in connection with the offer or sale of securities registered under Section 10-5-23 of the Act must be filed with the Commissioner at least five (5) business days prior to issuance, release, circulation or distribution thereof.

(2) The following Sales and Advertising Literature are not required to be filed with the Commissioner pursuant to this Rule:

(a) An advertisement, the content of which is limited to the information specified in Rule 134(a) adopted by the SEC under the Securities Act of 1933 and includes a statement that such advertisement does not constitute an offer to sell or the solicitation of an offer to buy a security and the name and address from whom a prospectus can be obtained;

(b) Customary quarterly, annual and other periodic reports to security holders, proxy statements, dividend notices, and similar documents that are routinely sent to security owners; and

(c) The prospectus included in the registration statement filed with the Commissioner relating to such offering of securities.

**Authority: O.C.G.A. Secs. 10-5-23, 10-5-70, 10-5-74.**

#### **590-4-3-.13 Escrow and Impoundment of Proceeds.**

(1) In any case where securities are to be registered for sale pursuant to Section 10-5-23 of the Act, and the issuer of such securities has not had any substantial gross revenues from the sale of products or services or any substantial net income from any source for any fiscal year ended during the past three years and has not succeeded, and does not intend to succeed, to any business that has had any substantial gross revenues from the sale of products or services, or any substantial net income from any source, for any fiscal year ended during the past three years, the following shall be required as conditions to registration:

(a) Except in an offering pursuant to an underwriting agreement under which no securities will be sold unless all securities to be offered are sold, pursuant to a written escrow agreement, the deposit into escrow of 100% of the proceeds from the sale of such registered securities until the amount deposited in such escrow equals or exceeds the amount referenced in the prospectus and approved by the Commissioner.

1. This escrow account shall be with a bank, trust company or other escrow agent approved by the Commissioner.

2. Until the escrow account contains the specified amount, the issuer shall cause 100% of the proceeds from the sale of such registered securities to be deposited directly into this account as soon as practicable after receipt. The escrow agreement may provide for disbursement to the issuer of up to 15% of the amount deposited until the specified amount is paid in.

3. The escrow agreement shall provide that if the escrow account does not contain the specified amount on the specified date no later than one year after the effective date of the registration, then all amounts contained in the escrow account, including all interest earned thereon, if any, shall be returned to the securities purchasers whose payments were deposited into the escrow account. The amount of repayment to each purchaser shall be determined by multiplying the

fraction, the numerator of which is the amount of each such purchaser's payments that have been deposited into the escrow account and the denominator of which is the aggregate amount of all deposits of purchaser payments into the escrow account, by the aggregate amount contained in the escrow account immediately prior to the repayment.

4. If the offering proceeds are to be used for a specific purpose, including, but not limited to, the purchase of real or personal property, the escrow agreement shall provide that, upon termination of the escrow account, the escrow funds shall be paid over to the attorney who is to handle the purchase closing.

5. The escrow agreement shall provide that the funds held in escrow, when released, will be used for the specific purposes stated in the prospectus, or offering circular, filed as part of the registration statement required by the Act.

6. The escrow agreement shall provide that, upon termination of the escrow account and payout of the escrow funds, the escrow agent shall notify the Commissioner of the time of disbursement and to whom the funds were disbursed.

(b) The deposit in an escrow account beginning on or before the date of the registration statement's effectiveness and continuing for a period of one (1) year from the termination of the registration statement's effectiveness and any renewal thereof:

1. Any securities of the same class issued or transferred to a person who is an executive officer, director, general partner or affiliate of the issuer or to any other person authorized to sell such securities for the issuer, still beneficially owned by such person, except a dealer or limited dealer registered with the Commissioner and selling pursuant to an underwriting agreement that is disclosed in the prospectus delivered to each purchaser; or

2. Any securities of the same class as the securities registered that are to be issued to any person specified in subparagraph (1)(b)1. above, at a price below the proposed offering price of such securities or for a consideration other than cash.

(2) No interest in any security held in an escrow account provided for in paragraph (b) above shall be offered for sale, sold, assigned or transferred during the existence of such escrow account without the written consent of the Commissioner. The Commissioner may grant such consent when there has been a significant change of circumstances or to avoid an undue hardship, but only if he deems such consent consistent with the protection of investors.

(3) If the issuer intends to use the proceeds of an offering for a specific purpose or acquisition as stated in the prospectus or offering circular, and the issuer does not fall within the provisions of paragraphs (1)(a) or (1)(b) of this Rule, then the Commissioner may require the issuer to hold the proceeds of the offering in escrow until the funds reach the amount necessary to accomplish said purpose or acquisition. Said requirement by the Commissioner shall be based upon the provisions of Section 10-5-50 of the Act for the protection of investors.

(4) A final copy of any escrow agreement required by this Rule, signed by both the escrow agent and the issuer, shall be included as an exhibit to the registration statement filed with the Commissioner.

(5) The requirements of this Rule may be superseded or modified in writing by the Commissioner if he or she determines that such requirements are not necessary to protect investors with respect to a particular issue of securities.

**Authority: O.C.G.A. Secs. 10-5-23, 10-5-24, 10-5-53, 10-5-70, 10-5-74.**