

**MODIVCARE INC. (THE “COMPANY”)  
EQUITY RIGHTS OFFERING SUBSCRIPTION FORM**

**FOR USE BY HOLDERS (COLLECTIVELY, THE “NOTEHOLDERS”) OF SECOND LIEN  
NOTES AND SUBORDINATED UNSECURED NOTES (COLLECTIVELY, THE “NOTES”)**

**IN CONNECTION WITH DEBTORS’  
DISCLOSURE STATEMENT (AS AMENDED) DATED OCTOBER 6, 2025**

**SUBSCRIPTION EXPIRATION DEADLINE**

The deadline for (i) your broker, bank, commercial bank, transfer agent, trust company, dealer, or other agent or nominee, as applicable, that holds your Notes in “street name” (each, a “Nominee”) to tender your applicable Notes via the Automated Tender Offer Program (“ATOP”) of The Depository Trust Company (“DTC”), (ii) Eligible Holders to submit a duly completed and executed Subscription Form (with the accompanying applicable IRS form and any other information and materials required to be submitted in accordance with this Subscription Form), and (iii) Eligible Holders to deliver the aggregate Purchase Price, is 5:00 p.m. prevailing Eastern Time on December 5, 2025 (the “Subscription Expiration Deadline”).

Capitalized terms used but not defined herein shall have the meaning assigned to them in the Equity Rights Offering Procedures enclosed herewith (the “Equity Rights Offering Procedures”).

Please note that your Notes must be delivered via DTC’s ATOP platform prior to the Subscription Expiration Deadline and (i) your duly completed and executed Subscription Form and accompanying IRS Form W-9 or appropriate IRS Form W-8, as applicable, and (ii) the payment of the aggregate Purchase Price, in each case, must be received by the Subscription Agent no later than the Subscription Expiration Deadline. If you do not comply with all of the Subscription Steps (as defined below) by the applicable deadlines, you shall be deemed to have forever and irrevocably relinquished and waived your right to participate in the Equity Rights Offering.

Please allot sufficient time to coordinate with your Nominee, so that your completed Subscription Form includes the applicable ATOP numbers and wire detail and is actually received by the Subscription Agent on or before the Subscription Expiration Deadline.

The Subscription Rights and the Equity Rights Offering Shares are being distributed and issued by the Company without registration under the U.S. Securities Act of 1933, as amended (the “Securities Act”), in reliance upon the exemption from registration provided by Section 4(a)(2) of the Securities Act, the safe harbor of Regulation D promulgated thereunder, or such other exemption from registration as may be available under the Securities Act and any other applicable securities laws. None of the Subscription Rights or Equity Rights Offering Shares have been, nor is it anticipated that they will be, registered under the Securities Act or any state or local law requiring registration for the offer or sale of a security.

Please consult the Plan, the Disclosure Statement, and the Equity Rights Offering Procedures (including the Equity Rights Offering Instructions for Noteholders attached thereto) for additional information with respect to this Subscription Form.

If you have any questions, please contact the Subscription Agent via email at [ModivCareBallots@veritaglobal.com](mailto:ModivCareBallots@veritaglobal.com), or at one of the following phone numbers: +1 (877) 499-4509



(U.S./Canada) or +1 (917) 281-4800 (International).

The record date for the determination of Eligible Holders of an Allowed Second Lien Claim or an Allowed Subordinated Unsecured Claim for participation in the Equity Rights Offering is October 6, 2025 (the “Record Date”).

### Subscription Steps

In order to exercise the Subscription Rights and subscribe for the Equity Rights Offering Shares, you must follow the subscription steps listed below (the “Subscription Steps”):

1. **Submit your Notes via ATOP:** You must instruct your Nominee to electronically deliver any Notes you wish your Nominee to deliver via DTC’s ATOP platform, and the Nominee’s delivery of the Notes through ATOP must be completed by the Subscription Expiration Deadline. In order to complete Step 2 below, you must retrieve the Voluntary Offer Instruction number(s) from the Nominee that tendered your Notes for inclusion on this Subscription Form.
2. **Provide Registration Details and Other Required Information:** You must return a duly completed and executed Subscription Form with all relevant details (including those listed on Exhibit A hereto) and the IRS Form W-9 or appropriate IRS Form W-8, as applicable (these forms may be obtained from [www.irs.gov](http://www.irs.gov)), to your Nominee (or otherwise follow the directions of your Nominee), and such documents must be actually received by the Subscription Agent by the Subscription Expiration Deadline.
3. **Deliver Payment of the Aggregate Purchase Price:** You must deliver full payment of the aggregate Purchase Price to the Subscription Agent no later than the Subscription Expiration Deadline, in accordance with the wire instructions provided in Item 4 below, and the aggregate Purchase Price must be actually received by the Subscription Agent by the Subscription Expiration Deadline.

**BY FILLING IN THE DETAILS IN ITEMS 1, 2, AND 3 YOU ARE  
INDICATING THAT THE NOTEHOLDER IS THE BENEFICIAL HOLDER  
OF THE SECOND LIEN NOTES AND/OR SUBORDINATED UNSECURED NOTES.**

**Item 1. Subscription Rights Calculation Worksheet.**

In order to exercise your Subscription Rights and subscribe for the Equity Rights Offering Shares, you must have instructed your Nominee to electronically deliver your Notes into ATOP and such tender must have occurred prior to the Subscription Expiration Deadline. By tendering (or causing to be tendered) Notes into ATOP, the Noteholder is certifying that it holds the Notes as of the Record Date, is eligible to participate in the Equity Rights Offering, and agrees to be bound by the terms of the Equity Rights Offering. Nominees must submit instructions on account of each of their Noteholder clients separately. “Bulk tenders” into ATOP will not be permitted.

**IMPORTANT NOTE: IF YOU HOLD YOUR NOTES THROUGH MORE THAN ONE NOMINEE, YOU MUST GIVE INSTRUCTIONS TO EACH APPLICABLE NOMINEE.**

Use the worksheet below to determine the number of Equity Rights Offering Shares which you may subscribe for based on the principal amount of your Notes electronically delivered through ATOP. Please include the principal (face) amount of your Notes only—do not include any accrued or unmatured interest. If you do not know the principal amount of your Notes held, please contact your Nominee immediately.

Each Noteholder is entitled to subscribe for 21.90 Equity Rights Offering Shares per \$1,000 amount of the Second Lien Notes and 21.50 Equity Rights Offering Shares per \$1,000 amount of the Subordinated Unsecured Notes. The number of Equity Rights Offering Shares you are entitled to subscribe for per \$1,000 amount of your Second Lien Notes or Subordinated Unsecured Notes, as applicable, is indicative and subject to change as described in the Equity Rights Offering Procedures.

The maximum number of Equity Rights Offering Shares for which you may subscribe, based on the principal amount shown below, is calculated as follows:

<i>Description of Notes:</i>	<i>CUSIP/ISIN</i>	<i>Principal Amount</i>		<i>Subscription Rate *</i>		<i>The maximum Equity Rights Offering Shares based on your Second Lien Notes or Subordinated Unsecured Notes, as applicable (the “Maximum Participation Amount”) is:</i>
5.000% / 10.000% Second Lien Notes due 2029	60783XAC8 / US60783XAC83	\$ _____	x	0.02190	=	1a. _____ (Round down to nearest whole share)
5.000% / 10.000% Second Lien Notes due 2029	U60714AC3 / USU60714AC34	\$ _____	x	0.02190	=	1b. _____ (Round down to nearest whole share)
5.000% Senior Subordinated Unsecured Notes due 2029	60783XAA2 / US60783XAA28	\$ _____	x	0.02150	=	1c. _____ (Round down to nearest whole share)

5.000% Senior Subordinated Unsecured Notes due 2029	U60714AA7 / USU60714AA77	\$ _____	x	0.02150	=	1d. _____ (Round down to nearest whole share)
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*\* Rate to convert the principal amount into the number of Equity Rights Offering Shares (includes accrued interest where applicable). Subscription Rate is indicative and subject to change as described in the Equity Rights Offering Procedures.*

## Item 2. Subscription Rights Exercise and Nominee Instruction.

Use the worksheet below to list the amount of Notes you wish your Nominee to deliver electronically via ATOP. Please include the principal (face) amount of your Notes only—do not include any accrued or unmatured interest. If you do not know the principal amount of your Notes held, please contact your Nominee immediately. **The Subscription Agent will not deliver any of your Notes via ATOP. Only your Nominee can deliver your Notes via ATOP on your behalf.**

The principal amount of Notes you instruct your Nominee to deliver via ATOP and (if calculated correctly) the corresponding number of Equity Rights Offering Shares for which you wish to subscribe are shown below and should be used to calculate the aggregate Purchase Price in Item 3 below.

Please note that the amount shown in this Item 2 must be no greater than the principal amount of Notes that your Nominee electronically delivers on your behalf via ATOP. If there is a discrepancy between the amount set forth in this Item 2 below and the amount(s) delivered via ATOP, the amount delivered through ATOP shall control. Moreover, please note that if your calculations are incorrect, the amount of Notes tendered into ATOP will control regarding the amount of Equity Rights Offering Shares that you are committed to purchase pursuant to this Equity Rights Offering.

**IMPORTANT NOTE:** You must instruct your Nominee to deliver your Notes via ATOP to exercise your Subscription Rights. You may exercise any portion of your principal amount of Notes, up to the total amount you hold. If you do not wish to exercise 100% of your Subscription Rights, you should instruct your Nominee to only submit the principal amount of Notes associated with the number of Subscription Rights you wish to exercise. For example, if you only wish to exercise 50% of your Subscription Rights, you should instruct your Nominee to only deliver 50% of your principal amount of Notes via ATOP. Once your Nominee has tendered your Notes through ATOP, such Notes shall be frozen from trading unless and until the Equity Rights Offering is terminated.

<i>Description of Notes:</i>	<i>CUSIP/ISIN</i>	<i>Principal Amount you request your Nominee to deliver via ATOP (may not exceed principal amount held)</i>		<i>Subscription Rate *</i>		<i>Number of Equity Rights Offering Shares based on your Notes you are requesting be submitted via ATOP**</i>	<i>DTC ATOP Confirmation Number (VOI) (one ATOP Confirmation Number per CUSIP)</i>	<i>DTC Participant Number</i>	<i>DTC Participant Name</i>
5.000% / 10.000% Second Lien Notes due 2029	60783XAC8 / US60783XAC83	\$ _____	x	0.02190	=	2a _____ (Round down to nearest whole share) (Insert into Item 3a below)			

5.000% / 10.000% Second Lien Notes due 2029	U60714AC3 / USU60714AC34	\$ _____	x	0.02190	=	2b _____ (Round down to nearest whole share)  (Insert into Item 3b below)			
5.000% Senior Subordinated Unsecured Notes due 2029	60783XAA2 / US60783XAA28	\$ _____	x	0.02150	=	2c _____ (Round down to nearest whole share)  (Insert into Item 3c below)			
5.000% Senior Subordinated Unsecured Notes due 2029	U60714AA7/ USU60714AA77	\$ _____	x	0.02150	=	2d _____ (Round down to nearest whole share)  (Insert into Item 3d below)			

*\* Rate to convert the principal amount into the number of Equity Rights Offering Shares (includes accrued interest where applicable). Subscription Rate is indicative and subject to change as described in the Equity Rights Offering Procedures.*

*\*\* Number of Equity Rights Offering Shares to be received is subject to adjustment as described in the Equity Rights Offering Procedures. If the aggregate Adjusted Purchase Price is reduced, the number of Equity Rights Offering Shares you will receive will be increased accordingly.*

### Item 3. Calculation of Aggregate Purchase Price for Equity Rights Offering Shares

By filling in the following blanks, you are indicating that the Noteholder is interested in purchasing the number of Equity Rights Offering Shares specified in Item 2 above (which does not exceed the Maximum Participation Amount calculated in Item 1), on the terms and subject to the conditions set forth in the Equity Rights Offering Procedures.

	<i>Equity Rights Offering Shares*</i>		<i>Price per share of Equity Rights Offering Shares**</i>		<i>Aggregate Purchase Price***</i>
3a.	_____ Total number of shares of New Common Interests you elect to purchase from 2a above	X	\$12.30	=	_____ 3a. Total Amount (rounded down to nearest cent)
3b.	_____ Total number of shares of New Common Interests you elect to purchase from 2b above	X	\$12.30	=	_____ 3b. Total Amount (rounded down to nearest cent)
3c.	_____ Total number of shares of New Common Interests you elect to purchase from 2c above	X	\$12.30	=	_____ 3c. Total Amount (rounded down to nearest cent)
3d.	_____ Total number of shares of New Common Interests you elect to purchase from 2d above	X	\$12.30	=	_____ 3d. Total Amount (rounded down to nearest cent)



owner of the Notes set forth in Item 1 above, or the authorized signatory (the “**Authorized Signatory**”) of such Noteholder acting on behalf of the Noteholder, (ii) the Noteholder has reviewed a copy of the Plan, the Disclosure Statement, and the Equity Rights Offering Procedures (including the Equity Rights Offering Instructions for Noteholders attached thereto) and other applicable materials, (iii) the Noteholder understands that the exercise of the rights under the Equity Rights Offering is subject to all the terms and conditions set forth in the Plan and the Equity Rights Offering Procedures, (iv) the Noteholder is an “*accredited investor*” (within the meaning of Rule 501(a) under the Securities Act) or a “*qualified institutional buyer*” (within the meaning of Rule 144A of the Securities Act)<sup>1</sup>, and (v) with respect to holders of an Allowed Second Lien Claim only, you do not make the election to receive the GUC Cashout Value.

By electing to subscribe for the amount of Equity Rights Offering Shares shown in Item 2 above, the Noteholder (or the Authorized Signatory on behalf of the Noteholder) acknowledges that payment of the aggregate Purchase Price associated with such election must be made by the Subscription Expiration Deadline.

**The Noteholder (or the Authorized Signatory on behalf of such Noteholder) acknowledges that, by executing this Subscription Form, the Noteholder named below has elected to subscribe for the number of Equity Rights Offering Shares shown in Item 2 above (such amount being subject to adjustment as described in the Equity Rights Offering Procedures), will be bound to pay the aggregate Purchase Price for the Equity Rights Offering Shares (subject to any refund to be paid based on the aggregate Adjusted Purchase Price, as described in the Equity Rights Offering Procedures), and that it may be liable to the Debtors to the extent of any nonpayment.**

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<sup>1</sup> Please see Annex A attached hereto for the definitions of the terms “accredited investor” and “qualified institutional buyer.”

## **Exhibit A**

### **A. Eligible Holder Certification:**

Name of Eligible Holder: \_\_\_\_\_

U.S. Federal Tax EIN/SSN (optional): \_\_\_\_\_

If Non-U.S. person, check here and attach appropriate IRS Form W-8 ☐

If U.S. person, check here and attach IRS Form W-9 ☐

Signature: \_\_\_\_\_

Name of Signatory: \_\_\_\_\_

Title: \_\_\_\_\_

Type of account: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

### **B. Wire Information in the Event a Refund is Needed:**

Account Name: \_\_\_\_\_

Beneficiary Address: \_\_\_\_\_

Bank Account No. (For International this may be IBAN): \_\_\_\_\_

ABA/Routing No.: \_\_\_\_\_

Bank Name: \_\_\_\_\_

Bank Address: \_\_\_\_\_

Reference: \_\_\_\_\_

Swift Instructions (if applicable): \_\_\_\_\_

### **C. Registration Details for all Equity Rights Offering Shares to be Issued (given Equity Rights Offering Shares are not DTC-Eligible):**

Name of Registered Party: \_\_\_\_\_

Address 1: \_\_\_\_\_



Address 2: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email: \_\_\_\_\_

U.S. Federal Tax EIN/SSN: \_\_\_\_\_

If Non-U.S. person, check here and attach appropriate IRS Form W-8 ☐

If U.S. person, check here and attach IRS Form W-9 ☐

Signature: \_\_\_\_\_

Name of Signatory: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

## Annex A

**“Accredited Investor”** is defined in Rule 501 of the U.S. Securities Act of 1933, as amended (the **“Securities Act”**), as:

- (a) any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:
  - (1) Any bank as defined in section 3(a)(2) of the Securities Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Securities Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the U.S. Securities Exchange Act of 1934, as amended (the **“Exchange Act”**); any investment adviser registered pursuant to section 203 of the Investment Advisers Act of 1940, as amended (the **“Investment Advisers Act”**), or registered pursuant to the laws of a state; any investment adviser relying on the exemption from registering with the U.S. Securities and Exchange Commission (the **“Commission”**) under section 203(l) or (m) of the Investment Advisers Act; any insurance company as defined in section 2(a)(13) of the Securities Act; any investment company registered under the U.S. Investment Company Act of 1940, as amended (the **“Investment Company Act”**), or a business development company as defined in section 2(a)(48) of the Investment Company Act; any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958; any Rural Business Investment Company as defined in section 384A of the Consolidated Farm and Rural Development Act, as amended; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, as amended, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;
  - (2) Any private business development company as defined in section 202(a)(22) of the Investment Advisers Act;
  - (3) Any organization described in section 501(c)(3) of the U.S. Internal Revenue Code of 1986, as amended (the **“IRC”**), corporation, Massachusetts or similar business trust, partnership, or limited liability company, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;
  - (4) Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;
  - (5) Any natural person whose individual net worth, or joint net worth with that person’s spouse or spousal equivalent, exceeds \$1,000,000;
    - (i) Except as provided in paragraph (a)(5)(ii) of this section, for purposes of calculating

net worth under this paragraph (a)(5):

- (A) The person's primary residence shall not be included as an asset;
  - (B) Indebtedness that is secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time of the sale of securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of sale of securities exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and
  - (C) Indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the primary residence at the time of the sale of securities shall be included as a liability;
- (ii) Paragraph (a)(5)(i) of this section will not apply to any calculation of a person's net worth made in connection with a purchase of securities in accordance with a right to purchase such securities, provided that:
- (A) Such right was held by the person on July 20, 2010;
  - (B) The person qualified as an accredited investor on the basis of net worth at the time the person acquired such right; and
  - (C) The person held securities of the same issuer, other than such right, on July 20, 2010;
- (6) Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse or spousal equivalent in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;
  - (7) Any trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in Rule 506(b)(2)(ii) of the Securities Act;
  - (8) Any entity in which all of the equity owners are accredited investors;
  - (9) Any entity, of a type not listed in paragraph (a)(1), (2), (3), (7), or (8), not formed for the specific purpose of acquiring the securities offered, owning investments in excess of \$5,000,000;
  - (10) Any natural person holding in good standing one or more professional certifications or designations or credentials from an accredited educational institution that the Commission has designated as qualifying an individual for accredited investor status. In determining whether to designate a professional certification or designation or credential from an accredited educational institution for purposes of this paragraph (a)(10), the Commission will consider, among others, the following attributes:
    - (i) the certification, designation, or credential arises out of an examination or series of

examinations administered by a self-regulatory organization or other industry body or is issued by an accredited educational institution;

(ii) the examination or series of examinations is designed to reliably and validly demonstrate an individual's comprehension and sophistication in the areas of securities and investing;

(iii) persons obtaining such certification, designation, or credential can reasonably be expected to have sufficient knowledge and experience in financial and business matters to evaluate the merits and risks of a prospective investment; and

(iv) an indication that an individual holds the certification or designation is either made publicly available by the relevant self-regulatory organization or other industry body or is otherwise independently verifiable;

(11) Any natural person who is a "knowledgeable employee," as defined in rule 3c-5(a)(4) under the Investment Company Act, of the issuer of the securities being offered or sold where the issuer would be an investment company, as defined in Section 3 of the Investment Company Act, but for the exclusion provided by either section 3(c)(1) or Section 3(c)(7) of the Investment Company Act;

(12) Any "family office," as defined in rule 202(a)(11)(G)-1 under the Investment Advisers Act:

(i) With assets under management in excess of \$5,000,000,

(ii) That is not formed for the specific purpose of acquiring the securities offered, and

(iii) Whose prospective investment is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective investment; and

(13) Any "family client," as defined in rule 202(a)(11)(G)-1 under the Investment Advisers Act, of a family office meeting the requirements in paragraph (a)(12) of this section and whose prospective investment in the issuer is directed by such family office pursuant to paragraph (a)(12)(iii).

**"Qualified institutional buyer"** is defined in Rule 144A under the Securities Act as:

(a)

(1)

(i) any of the following entities, acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least US\$100 million in securities of issuers that are not affiliated with the entity:

(A) any insurance company as defined in Section 2(a)(13) of the Securities Act; Note: A purchase by an insurance company for one or more of its separate accounts, as defined by Section 2(a)(37) of the Investment Company Act, which are neither registered under Section 8 of the Investment Company Act nor required to be so registered, shall be deemed to be a purchase for the account of such insurance

company.

- (B) any investment company registered under the Investment Company Act or any business development company as defined in Section 2(a)(48) of the Investment Company Act;
  - (C) any Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the U.S. Small Business Investment Act of 1958 or any Rural Business Investment Company as defined in section 384A of the Consolidated Farm and Rural Development Act, as amended;
  - (D) any plan established and maintained by a U.S. state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees;
  - (E) any employee benefit plan within the meaning of Title I of the U.S. Employee Retirement Income Security Act of 1974, as amended;
  - (F) any trust fund whose trustee is a bank or trust company and whose participants are exclusively plans of the types identified in paragraph (a)(1)(i)(D) or (E) of this section, except trust funds that include as participants individual retirement accounts or H.R. 10 plans;
  - (G) any business development company as defined in Section 202(a)(22) of the U.S. Investment Advisers Act;
  - (H) any organization described in Section 501(c)(3) of the IRC, corporation (other than a bank as defined in Section 3(a)(2) of the Securities Act or a savings and loan association or other institution referenced in Section 3(a)(5)(A) of the Securities Act or a foreign bank or savings and loan association or equivalent institution), partnership, limited liability company, or Massachusetts or similar business trust;
  - (I) any investment adviser registered under the Investment Advisers Act; and
  - (J) any institutional accredited investor, as defined in Rule 501(a) under the Act, of a type not listed in paragraphs (a)(1)(i)(A) through (I) or paragraphs (a)(1)(ii) through (vi);
- (ii) any dealer registered pursuant to Section 15 of the Exchange Act, acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least US\$10 million of securities of issuers that are not affiliated with the dealer, provided that securities constituting the whole or a part of an unsold allotment to or subscription by a dealer as a participant in a public offering shall not be deemed to be owned by such dealer;
  - (iii) any dealer registered pursuant to Section 15 of the Exchange Act acting in a riskless principal transaction (as defined below) on behalf of a qualified institutional buyer; Note: A registered dealer may act as agent, on a non-discretionary basis, in a transaction with a qualified institutional buyer without itself having to be a qualified institutional buyer;
  - (iv) any investment company registered under the Investment Company Act, acting for its

own account or for the accounts of other qualified institutional buyers, that is part of a family of investment companies which own in the aggregate at least US\$100 million in securities of issuers, other than issuers that are affiliated with the investment company or are part of such family of investment companies. “Family of investment companies” means any two or more investment companies registered under the Investment Company Act, except for a unit investment trust whose assets consist solely of shares of one or more registered investment companies, that have the same investment adviser (or, in the case of unit investment trusts, the same depositor), provided that, for purposes of this section:

- (A) each series of a series company (as defined in Rule 18f-2 under the Investment Company Act) shall be deemed to be a separate investment company; and
  - (B) investment companies shall be deemed to have the same adviser (or depositor) if their advisers (or depositors) are majority-owned subsidiaries of the same parent, or if one investment company’s adviser (or depositor) is a majority-owned subsidiary of the other investment company’s adviser (or depositor);
  - (v) any entity, all of the equity owners of which are qualified institutional buyers, acting for its own account or the accounts of other qualified institutional buyers; and
  - (vi) any bank as defined in Section 3(a)(2) of the Securities Act, any savings and loan association or other institution as referenced in Section 3(a)(5)(A) of the Securities Act, or any foreign bank or savings and loan association or equivalent institution, acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least US\$100 million in securities of issuers that are not affiliated with it and that has an audited net worth of at least US\$25 million as demonstrated in its latest annual financial statements, as of a date not more than 16 months preceding the date of sale under the rule in the case of a U.S. bank or savings and loan association, and not more than 18 months preceding such date of sale for a foreign bank or savings and loan association or equivalent institution.
- (2) In determining the aggregate amount of securities owned and invested on a discretionary basis by an entity, the following instruments and interests shall be excluded: bank deposit notes and certificates of deposit; loan participations; repurchase agreements; securities owned but subject to a repurchase agreement; and currency, interest rate and commodity swaps.
  - (3) The aggregate value of securities owned and invested on a discretionary basis by an entity shall be the cost of such securities, except where the entity reports its securities holdings in its financial statements on the basis of their market value, and no current information with respect to the cost of those securities has been published. In the latter event, the securities may be valued at market for purposes of this section.
  - (4) In determining the aggregate amount of securities owned by an entity and invested on a discretionary basis, securities owned by subsidiaries of the entity that are consolidated with the entity in its financial statements prepared in accordance with generally accepted accounting principles may be included if the investments of such subsidiaries are managed under the direction of the entity, except that, unless the entity is a reporting company under Section 13 or 15(d) of the Exchange Act, securities owned by such subsidiaries may not be included if the entity itself is a majority-owned subsidiary that would be included in the consolidated

financial statements of another enterprise.

- (5) For purposes of this section, “riskless principal transaction” means a transaction in which a dealer buys a security from any person and makes a simultaneous offsetting sale of such security to a qualified institutional buyer, including another dealer acting as riskless principal for a qualified institutional buyer.