

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 8985 / November 25, 2008**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 28522 / November 25, 2008**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13302**

**In the Matter of**

**5G WIRELESS  
COMMUNICATIONS, INC.**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-  
DESIST AND EXEMPTION SUSPENSION  
PROCEEDINGS, MAKING FINDINGS,  
IMPOSING A CEASE-AND-DESIST  
ORDER, AND PERMANENTLY  
SUSPENDING THE REGULATION E  
EXEMPTION AS TO 5G WIRELESS  
COMMUNICATIONS, INC., PURSUANT  
TO SECTION 9(f) OF THE INVESTMENT  
COMPANY ACT OF 1940 AND RULE  
610(c) OF REGULATION E**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist and exemption suspension proceedings be, and hereby are, instituted pursuant to Section 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) and Rule 610(c) of Regulation E against 5G Wireless Communications, Inc. (“5G Wireless” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist and Exemption Suspension Proceedings, Making Findings, Imposing a Cease-and-Desist Order, and Permanently Suspending the Regulation E Exemption as to 5G Wireless Communications, Inc., Pursuant to Section 9(f) of the Investment Company Act of 1940 and Rule 610(c) of Regulation E (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### **Summary**

1. Since electing to be regulated as a business development company ("BDC") on October 19, 2004, 5G Wireless has, among other things, issued rights to purchase its securities without expiration to non-security holders; issued stock with unequal voting rights; issued warrants without authorization of its shareholders which, upon conversion, would represent more than 25% of its outstanding voting securities and be issued at a price below the market value on the date of issuance; and issued securities for services. As a result, 5G Wireless violated Sections 18(d), 18(i), and 23(a), respectively, of the Investment Company Act. In addition, 5G Wireless failed to obtain a fidelity bond as required under Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, and failed to adopt and implement written compliance procedures as required under Investment Company Act Rule 38a-1. Finally, 5G Wireless failed to comply with Rule 609 of Regulation E because it did not file an offering status report on Form 2-E in connection with a securities offering under Regulation E commenced in October 2004.

#### **Respondent**

2. 5G Wireless is a Nevada corporation with principal offices located in Torrance, California. 5G Wireless elected BDC status on October 19, 2004 and withdrew its election on October 21, 2005. Prior to its BDC election, 5G Wireless was an operating company in the telecommunications business. Its common stock is registered under Section 12(g) of the Securities Exchange Act of 1934 and is traded on the Pink Sheets under the symbol FGWI.

#### **Issuing Senior Securities and Convertible Securities with Unequal Voting Rights**

3. On September 22, 2004, 5G Wireless issued two convertible notes to private investors in exchange for \$2 million. The notes were convertible into 5G Wireless common stock at a price equal to the lesser of \$0.05 per share or 75% of the average of the five lowest closing bids for the company's stock for the 90 days preceding the conversion date.

4. On October 4, 2004, 5G Wireless issued 3 million shares of Series-A preferred stock to its two officers. Each Series-A preferred share was convertible into 800 common shares for three years from the date of issuance. Each Series-A preferred share was entitled to the same voting rights on all matters as 800 common shares.

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

5. On March 22, 2005, 5G Wireless issued convertible notes to three private investors in exchange for \$1 million. The notes were convertible into 5G Wireless common stock at a price equal to the lower of \$0.01 per share or 75% of the average of the five lowest bids for the common stock for the 90 trading days preceding a conversion date. Each of these convertible notes also included a Class-A warrant, which was convertible into common shares at a price of \$0.01 per share and was exercisable for five years from the purchase date.

6. Under Section 61(b) of the Investment Company Act, a BDC must comply with Section 61 at the time it becomes subject to Sections 55 through 65 of the Investment Company Act (“the BDC provisions”), “as if it were issuing a security of each class which it has outstanding at such time.” 5G Wireless became subject to the BDC provisions on October 19, 2004.

7. Section 18 of the Investment Company Act is made applicable to BDCs by Section 61(a) of the Investment Company Act, subject to certain exceptions. Section 18(d), as applicable to BDCs, generally prohibits them from issuing “any warrant or right to subscribe to or purchase a security of which such company is the issuer, except in the form of warrants or rights to subscribe expiring not later than one hundred and twenty days after their issuance and issued exclusively and ratably to a class or classes of such company's securities holders.” 5G Wireless’ convertible notes, Class-A warrants, and convertible Series-A preferred stock, which constituted rights to subscribe to or purchase securities, did not provide that the conversion feature would expire within 120 days after their issuance.

8. Section 61(a)(3) allows a BDC, notwithstanding Section 18(d), to issue warrants, options, or rights to subscribe or convert to voting securities that are accompanied by securities if, among other things, the BDC’s shareholders authorize, and a majority of the BDC’s disinterested directors approves, the proposal to issue such securities; the exercise or conversion price is not less than the current market value at the date of issuance; and the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance does not exceed 25% of the BDC’s outstanding voting securities.

9. As of September 30, 2004, 5G Wireless had 641,637,979 shares of common stock outstanding. When issued, the notes were convertible into approximately 200,000,000 shares based upon the 90-day average closing bid price of \$0.01. These shares represented approximately 31% of the outstanding voting shares as of September 30, 2004, exceeding the 25% limit of Section 18(d), as modified by 61(a)(3) of the Investment Company Act. 5G Wireless’ financial condition remained essentially unchanged between September 30, 2004 and its election on October 19, 2004. Furthermore, the conversion features on the convertible notes and Series-A preferred shares, as well as the exercise terms of the Class-A warrants attached to the second issue of convertible notes, were not approved by the shareholders and were issued with conversion and exercise provisions based upon prices below the common stock’s market price on the dates of issuance.

10. With certain exceptions not relevant here, Section 18(i) of the Company Act provides that every share of stock issued by a BDC shall be a voting stock and have equal voting rights with every other outstanding voting stock. Here, each Series-A preferred shareholder was entitled to vote on all matters at a rate 800 times greater than the common shares.

#### **Issuance of Shares for Services**

11. Section 23(a) of the Investment Company Act, which Section 63 makes applicable to BDCs, generally prohibits any closed-end company from issuing securities for services or property other than cash or securities. On November 1, 2004, 5G Wireless issued 3 million restricted shares of common stock valued at \$39,000, or \$0.013 per share, to a consultant in exchange for services. On December 15, 2004, 5G Wireless issued 888,889 shares with an aggregate market value of \$12,000 to two individuals and one law firm for legal services. On January 10, 2005, 5G Wireless issued 8,709,676 restricted shares valued at \$94,500 to seven of its employees, including the chief executive officer for their services to the BDC in the fourth quarter of 2004.

#### **Failure to Adopt and Implement Compliance Policies and Procedures**

12. On December 17, 2003, the Commission adopted Rule 38a-1 under the Investment Company Act, which requires each registered investment company and BDC to adopt and implement written policies and procedures reasonably designed to prevent violations of federal securities laws. These policies and procedures must be approved by the BDC's board of directors (including a majority of disinterested directors) and reviewed annually. Furthermore, each BDC must appoint a chief compliance officer to administer the policies and procedures and to fulfill certain reporting duties to the board. The compliance deadline for this rule was October 5, 2004. 5G Wireless failed to adopt and implement written policies and procedures reasonably designed to prevent violations of federal securities laws and failed to appoint a chief compliance officer.

#### **Failure to Provide and Maintain a Fidelity Bond**

13. Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, which Section 59 makes applicable to BDCs, require each BDC to provide and maintain a bond issued by a reputable fidelity insurance company against larceny and embezzlement by officers and employees of the BDC. 5G Wireless did not provide and maintain a fidelity bond.

#### **Violations**

14. As a result of the conduct described above, 5G Wireless violated Sections 17(g), 18(d), 18(i), and 23(a) of the Investment Company Act and Rule 17g-1 and Rule 38a-1 thereunder.

#### **Failure to Comply with Rule 609 of Regulation E**

15. On October 22, 2004, 5G Wireless filed a Form 1-E notification of stock issuance pursuant to the securities registration exemption under Securities Act of 1933 Regulation E. The filing

included a required offering circular, which provided certain disclosures regarding the offering. Rule 609 of Regulation E requires that, within 30 days after the end of each six-month period following the date of the original offering circular, or upon the termination of the offering, whichever is earlier, an issuer must file a report on Form 2-E, providing certain information regarding the status of the offering. 5G Wireless did not file until June 24, 2005 the Form 2-E that was due within 30 days after April 22, 2005. Therefore, 5G Wireless failed to comply with Rule 609.

16. Under Regulation E, Rule 610(c), the Commission may, at any time after notice of and opportunity for hearing, enter an order permanently suspending the Regulation E exemption, if the Commission has reason to believe, among other things, that any of the terms or conditions of Regulation E have not been complied with, including failure to file any report as required by Rule 609.

#### **Respondent's Remedial Efforts**

17. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent 5G Wireless' Offer.

Accordingly, pursuant to Section 9(f) of the Investment Company Act and Rule 610(c) of Regulation E, it is hereby ORDERED that:

A. Respondent 5G Wireless cease and desist from committing or causing any violations and any future violations of Sections 17(g), 18(d), 18(i), and 23(a) of the Investment Company Act and Rules 17g-1 and 38a-1 thereunder.

B. The Regulation E exemption as to Respondent 5G Wireless be, and hereby is, permanently suspended.

By the Commission.

Florence E. Harmon  
Acting Secretary