

## CHECKLIST: Securities Laws

In the 1920s, companies often sold stocks and bonds promising huge profits—without disclosing any meaningful information to investors. These actions contributed to the Stock Market Crash of 1929. As a result, Congress enacted federal securities laws and created the Securities and Exchange Commission (SEC) to administer them. The states also have laws regulating the offer and sale of securities.

There are two main federal laws that govern a company wanting to offer and sell its securities to the public. These two federal laws are the Securities Act of 1933 (Securities Act), and the Securities Exchange Act of 1934 (Exchange Act). This list can help you determine if your public offerings are covered by these laws.

- The Securities Act provides that no security may be offered or sold to the public unless it is registered with the SEC, or unless the security or sale is exempted by some other provision of the securities Act. The basic purpose of the Securities Act is to ensure that adequate information is available to potential purchasers of securities. Filing a registration statement with the SEC can be costly and time consuming. The Securities Act requires companies to give investors "full disclosure" of all "material facts." In other words, a company is required to disclose the facts investors would find important when making an investment decision. The SEC doesn't evaluate the merits of offerings, or determine whether the securities offered are "good" or appropriate investments. The SEC just reviews registration statements and finds them "effective" if the company has satisfied its disclosure rules.
- The Exchange Act requires publicly held companies to make continuing periodic disclosures of information about their business operations, financial conditions, and managements. The Exchange Act requires companies (and sometimes the company's officers, directors and larger shareholders) to file periodic reports or other disclosure documents with the SEC. Sometimes the company must provide the information directly to investors.
- There are exemptions from these registration and reporting requirements. In general, there are six exemptions from registration that may be used in connection with private placements. Do any of them apply to you?

*Yes/no*

- \_\_\_ Regulation A exempts certain public offerings not in excess of \$5 million.
- \_\_\_ Rule 504 exempts certain offerings not in excess of \$1 million.
- \_\_\_ Rule 505 exempts limited offerings not in excess of \$5 million.
- \_\_\_ Section 4(2) of the Securities Act exempts from registration transactions by a company not involving any public offering. The Commission had adopted Rule 506 as a means of providing a “safe harbor” under Section 4(2).
- \_\_\_ Section 4(6) of the Securities Act exempts limited offers and sales solely to one or more “accredited investors” where the amount offered does not exceed \$5 million.
- \_\_\_ Section 3(a)(11) of the Securities Act exempts offers and sales only to persons resident within a single state, where the company is resident (or incorporated if a corporation) and doing business within such state.

Rules 504 to 508 are part of Regulation D. Most private placements use one of the Regulation D safe harbors.

- Federal securities laws specifically preserve the power of the states to regulate securities. State laws regulating the offer and sale of securities are known as “*Blue Sky*” laws. The state securities laws were named “Blue Sky” laws after an early judicial opinion describing their purpose as “prevention of speculative schemes that have no more basis than so many feet of blue sky.” Blue Sky laws are sometimes more restrictive than the federal securities laws.

Blue Sky laws differ greatly from state to state, but generally contain three general types of provisions. Those three provisions are: prohibiting fraud in the sale of securities; requiring registration of broker-dealers; and requiring registration of securities that will be sold in the state.

Consult your securities lawyer if you are considering going public! Your lawyer can help ensure that you comply with all applicable state and federal securities laws.