



Stock Offerings and Securities Laws - Registration Requirements

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Offers and sales of securities must comply with federal and state securities laws. Companies offering and selling stock, or issuing options or warrants to purchase stock, are offering and selling securities.

There are federal and state securities laws that deal with the registration of offers and sales of securities and that prohibit fraud in connection with the offer and sale of securities. This *QuickStudy* discusses registration issues. (A separate *QuickStudy* discusses the fraud prohibition.)

Federal Law

Federal law generally prohibits companies from *offering* to sell securities unless a federal registration statement has been filed with the SEC, and from *selling* securities unless the registration statement has been declared effective. In other words, it's not only the sale of securities that will trigger the need to comply with federal securities laws, but merely making an *offer* to sell securities will do so.

Federal registration is an expensive and time-consuming process, and subjects the company to certain ongoing federal securities law compliance obligations including the need to file periodic reports with the SEC (although this obligation may be subsequently suspended under certain circumstances).

Fortunately, federal law provides various exemptions from the registration requirements for specified types of securities and transactions. Emerging businesses offering and selling securities to private investors or venture capitalists commonly structure their offerings to take advantage of one of these exemptions. However, the exemptions are fairly complex and companies that desire to offer and sell securities should obtain assistance from a qualified securities law attorney.

Each exemption typically has a variety of requirements that must be met in order to qualify for the exemption. Although these requirements differ from exemption to exemption, some of the more common requirements include limitations on the dollar amount of the offering, the number or qualifications of investors, and the manner in which prospective investors are solicited. Because actions taken by a company can impact its ability to use a particular exemption, companies contemplating an offer and sale of securities should consider federal securities law compliance issues before the first offer is made. For example, a company that uses general solicitation or advertising to seek investors will be precluded from relying on any exemption that prohibits general solicitation or advertising.



State Law

Each state has its own securities laws that, like federal law, generally make it unlawful to offer or sell a security in the state unless the offering has been registered or qualified or the security or transaction is exempt under state law. Whether an offering is made in a particular state and is subject to that state's securities laws is determined under state law. For example, under California law, an offer or sale is made in California and is therefore subject to California's securities laws if:

- The offer to sell or buy originates from California;
- The offer to sell or buy (wherever originated) is directed to and received in California;
- The offer to sell or buy (wherever originated) is accepted in California; or
- The security is delivered to the purchaser in California if both the buyer and seller are domiciled in California.

Consequences of Failure to Comply

The company and its principals (i.e., officers, directors and controlling stockholders) can face criminal and civil fines and penalties for failing to comply with federal or state securities laws. In addition, the failure to comply with federal or state securities laws can give investors the right to sue to rescind the purchase and recover the price paid plus interest, or monetary damages. The company's principals may have personal liability in connection with a suit for rescission.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the author:

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