



Retail Securities Law: Beware of Blue Sky Laws

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State laws governing retail securities or Blue Sky Laws may not receive the attention that surrounds federal regulations, but organizations can run into significant financial and legal exposure if they fail to take them into account when considering an offering.

Failing to meet registration, filing or fee requirements in a particular state can lead state securities regulators to suspend an offer or sale of securities in their jurisdictions. In some cases, fines and other penalties, such as permanent bar, may apply, plus a referral to federal regulators.

A 2020 report by the North American Securities Administrators Association noted that state securities regulators remain vigilant in efforts to protect the public from unlicensed actors and unregistered schemes. NASAA, which represents state, provincial, and territorial securities administrators in the United States, Canada, and Mexico, said that in the previous year 738 actions were brought against unregistered actors, a 15 percent annual increase.

States, in general, follow model rules that promote uniform laws governing retail securities. Congress also has weighed in periodically to clarify which federal requirements preempt state rules. Even so, state regulators continue to promulgate individual rules that require close attention from issuers and their advisers. Some states have distinct regulations on the timing of registrations. Initial filing fees a requirement in most states can vary, and some states require additional filings and fees under certain conditions. States take a very proactive approach to making sure federal preemptions apply.

Exempt or Not?

While an offering may receive exemptions from the federal government, an organization may still be required to file under state laws and pay certain fees.

According to the U.S. Securities and Exchange Commission, offerings made under the following Securities Act exemptions are potentially subject to state registration or qualification:

- Section 4(a)(2)
- Rule 504
- Regulation A ? Tier 1
- Rules 147 and 147A
- Rule 701

Offerings made under the following Securities Act exemptions are not subject to state registration or qualification, according to the SEC:

- Rule 506(b)
- Rule 506(c)
- Regulation Crowdfunding
- Regulation A ? Tier 2

When an offering is subject to potential state registration or qualification, the securities laws in each state have their own separate registration requirements and exemptions. And even if the offering is not subject to state-level registration or qualification, the individual state may have its own filing and fee requirements.

Behind the Times

Issuers, brokers, and advisers may also run into trouble if they assume that certain federal exemptions have been adopted by the states in a timely fashion. In some cases, states have fallen behind in updating securities laws to reflect changes in federal regulations.

Recently, for instance, New York's attorney general announced a series of new rules designed to modernize registration and filing in the state. The new rules changed several filing and fee requirements for Regulation D offerings, as well as filing requirements for Regulation A ? Tier 2 offerings. (The final rules took effect on Dec. 2, 2020.)

The attorney general acknowledged in a news release that the rules were designed to update New York's registration procedures so they ?will better conform to the federal securities registration regime [and] cure industry confusion when it comes to certain registration requirements.?

Given the complexity and routine shifts in blue sky laws, strategic and timely advice around compliance is critical. An expert legal adviser can help an organization ensure that it is meeting state requirements?and do so in a way that saves time and money. To learn more about how we assist retail securities clients with ?blue sky? regulatory issues, contact us for a consultation.

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