



AbdulJaami, PLLC

International Commercial Transactions

Capitalizing Your Small Business

Accessing the U.S. Securities Market

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Roadmap

- Issuing Securities: Private or Public?
- Private Offering Exemptions
- Let's Make This Public – SEC Registration Requirements
- Getting Your (1933) Act Together
- All Grown Up – '34 Act Section 12(g)
- Going for the Gusto – National Securities Exchanges and Registration
- SEC Registration/Reporting – Mercy for Small Business Issuers
- Small Business Registration Regime
- Small Business Continuous Reporting Requirements
- Trading Places: OTCBB and Pink Sheets
- Wrap-up



Issuing Securities: Private or Public?

- “securities” – broadly defined by 1933 Act; includes stocks, bonds, notes and debentures
- Securities offered or sold in the U.S. must either be Registered w/the SEC (public) or come under an Exemption (private)
- Private issuance or Public?
 - Company Growth Stage : early/private, mid/public
 - Relative Capital Need: small/private, large/public
 - Dispersion of Securities: limited/private, wide/public
 - Non-cash Currency Need: limited/private, great/public
 - State of Capital Markets: closed/private, open/public



Private Offering Exemptions

- Regulation D
 - Rule 504: up to \$1,000,000 in 12 months
 - Rule 505: up to \$5,000,000 in 12 months
 - Rule 506: unlimited amount ('33 Act Section 4(2) safe harbor)
- Section 4(6) – Sales to Accredited Investors
 - Up to \$4,999,999 per offering
- Rule 701 – Employee Benefit Plans
 - Greater of \$1,000,000; 15% of assets; 15% class of securities
- Regulation A – “small” securities offering
 - Up to \$5,000,000 in 12 months; can offer/sell securities publicly
- Section 3(a)(11) and Rule 147 – intrastate offering
 - Unlimited amount; only in-state offers and sales



Private Offering Exemptions

- Failure to follow SEC rules and requirements may invalidate your exemption and/or subject you to legal liability
- Key Considerations
 - General solicitation or advertising usually prohibited
 - Offerees/Purchasers may need to be “accredited” or “sophisticated”
 - Multiple offerings may be “integrated”
 - Some exemptions have disclosure requirements
 - Secondary sales of securities are generally subject to restrictions
- Consult a Securities law professional!



Let's Make This Public

SEC Registration Requirements

- A company can have registered (public) securities under either or both of
 - The Securities Act of 1933 (“1933 Act”)
 - The Securities Exchange Act of 1934 (“1934 Act”)
- 1933 Act
 - Covers the public offering of a specific subset of securities for a specific purpose
- 1934 Act
 - Covers the public offering of an entire class of securities
- Regulation S-K sets out the requirements for registration statement disclosure under both the 1933 Act and 1934 Act



Getting Your (1933) Act Together

- Form S-1 (used if no other Form directly applies)
- Form S-3 (at least 12 months of 1934 Act reports filed)
 - Primary offerings of Investment Grade Securities; Secondary Offerings; Rights Offerings; DRIPs; Warrants; Options
 - Primary equity offerings (\$75 mm of stock held by non-affiliates)
- Form S-4
 - Merger and Acquisition offerings
- Form S-8
 - Employee Benefit Plan offerings
- Form S-11
 - Offerings by REITs and Companies that invest in Real Estate

All Grown Up – '34 Act Section 12(g)

- Under Section 12(g) of the 1934 Act, a class of securities must be registered once the issuer has:
 - Over \$1,000,000 in assets, and
 - A class of equity held by 500 or more holders
- Rule 12g-1 is an exemption from 12(g)
 - Issuers that have less than \$10,000,000 in assets do not have to register under Section 12(g)
- Form 8-A (for Issuers already subject to 1934 Act requirements)
- Form 10 (for all other Issuers)
- Simultaneous 1933 Act Registration may also be required



Going for the Gusto

National Securities Exchanges and Registration

- Companies that have listed securities on national securities exchange must register under Section 12 of the 1934 Act
- 10 National Securities Exchanges
 - American Stock Exchange
 - Boston Stock Exchange
 - Chicago Board Options Exchange
 - Chicago Stock Exchange
 - International Securities Exchange
 - National Stock Exchange
 - The Nasdaq Stock Market LLC
 - New York Stock Exchange
 - NYSE Arca
 - Philadelphia Stock Exchange
- Form 10 and Form 8-A are used for Registration



SEC Registration/Reporting

Mercy for Small Business Issuers

- SEC registration and reporting can be burdensome and expensive
- To provide Small Businesses with relief, the SEC adopted Regulation S-B
- Regulation S-B only applies to Small Business Issuers:
 - U.S. or Canadian Issuers, with
 - Revenues of less than \$25,000,000, and
 - Outstanding voting and non-voting common equity with a market value of less than \$25,000,000
 - (If the Issuer is a majority owned subsidiary, the parent must also be a Small Business Issuer)



Small Business Registration Regime

- Registering Securities under the 1933 Act
 - Form SB-1
 - may be used to offer/sell up to \$10,000,000 of securities sold for cash
 - May not be used if, including the Form SB-1 registration, more than \$10,000,000 in securities will have been registered in a 12 month period
 - Form SB-2
 - May be used to offer/sell an unlimited amount of securities to be sold for cash
- Registering Securities under the 1934 Act
 - Form 10-SB



Small Business Reporting Requirements

- Key Benefit – reduced 1934 Act disclosure requirements
- Form 10-QSB
 - For quarterly reporting requirements under 1934 Act Section 13 or 15(d)
 - Filed within 45 days of end of quarter
- Form 10-KSB
 - For annual reporting requirements
 - Filed within 90 days of end of quarter
- Transitional Small Business Issuers
 - Small Business Issuers that have not registered more than \$10,000,000 since becoming subject to 1934 Act reporting requirements can take advantage of further reduced disclosure requirements

Trading Places: OTCBB and Pinksheets

- Small Business Issuers tend to have securities quoted on the OTC Bulletin Board or the Pink Sheets
- OTC (Over-The-Counter) Bulletin Board
 - An SEC regulated quotation service with real-time quotes
 - Issuers of all securities quoted on the OTCBB are subject to 1934 Act periodic reporting requirements
- Pink Sheets
 - A quotation service for market makers
 - Issuers are not required to be subject to 1934 periodic reporting requirements



High-Notes; Wrap-Up

- Selling your securities; Public or Private?
- Registration – 1933 Act; 1934 Act; or Both?
- Can you benefit from Small Business Issuer disclosure?
- Where do you fit, OTCBB or Pink Sheets?
- Questions/Comments?
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