



## GOING PUBLIC BY WAY OF REGULATION D (504) OFFERING...

Under the Securities Act of 1933, any offer to sell securities must either be registered with the SEC or meet an exemption. Regulation D (or Reg D) provides three exemptions from the registration requirements, allowing some smaller companies to offer and sell their securities without having to register the securities with the SEC.

Rule 504 or Regulation D provides an exemption from the registration of the federal securities laws for some companies when they offer and sell up to \$1,000,000.00 of their securities in any 12 month period.

A company can use this exemption so long as it is not a Blank Check company and does not have to file reports under the Securities Exchange Act of 1934. Also, the exemption generally does not allow companies to solicit or advertise their securities to the public, and purchasers receive restricted securities, meaning that they may not sell the securities without registration or an applicable exemption.

Rule 504 does allow companies to make a public offering of freely tradable securities but only if one of the following circumstances is met:

- (1) The company registers the offering exclusively in one or more states that require a publicly filed registration statement and delivery of a substantive disclosure document to investors
- (2) A company registers and sells the offering in a state that requires registration and disclosure delivery and also sells in a state without those requirements, so long as the company delivers the disclosure documents required by the state where the company registered the offering to all purchasers (including those in the state that has no such requirements) or
- (3) The company sells exclusively according to state law exemptions that permit general solicitation and advertising, so long as the company sells only to "accredited investors."

An accredited investor is defined by federal securities law as:

- . a bank, insurance company, registered investment company, business development company, or small business investment company
- . an employee benefit plan, within the meaning of the Employee Retirement Income Security Act, if a bank, insurance company, or registered investment adviser makes the investment decisions, or if the plan has total assets in excess of \$5 million
- . a charitable organization, corporation, or partnership with assets exceeding \$5 million
- . a director, executive officer, or general partner of the company selling the securities
- . a business in which all the equity owners are accredited investors
- . a natural person who has individual net worth, or joint net worth with the person's spouse, that exceeds \$1 million at the time of the purchase
- . a natural person with income exceeding \$200,000 in each of the two most recent years or joint income with a spouse exceeding \$300,000 for those years and a reasonable expectation of the same income level in the current year or
- . Any trust with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase of the securities is directed by a person who has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment.
- . even if a company makes a private sale where there are no specific disclosure delivery requirements, a company should take care to provide sufficient information to investors to avoid violating the anti fraud provisions of the securities laws. This means that any information a company provides to investors must be free from false or misleading statements. Similarly, a company should not exclude any information if the omission makes what is provided to investors false or misleading.

Any information provided to an investor whether written or oral must be accurate in order not to violate the anti fraud provision, All securities offerings are subject to this provision.

This process provide a far less expensive way to take your company public than the traditional IPO, and it also provide a much faster track to having your company's shares listed and trading.

The Regulation D (504) offering is one method of going public we recommend to our clients, we normally conduct a review of the company to see if going public is a viable option for them.

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