

Cleaning Up Past Offerings to Investors

(For prior articles, including on the new JOBS Act that allows Rule 506 advertising and crowdfunding, see <http://thecaliforniasecuritiesattorneys.com/>.)

Many offerings to investors require that forms be filed with one or more securities agencies within 15 days of the first sale. Still, even if the forms were not filed on time, it's often possible to file them even though they are late. Filing late – even when a long time has passed – is much better than not making the filings at all.

For example, with a Rule 506 offering, Form D is supposed to be filed with the Securities & Exchange Commission (SEC) within 15 days of the receipt of the check or wire transfer from the first investor. In addition, many states require that a copy of Form D and a brief “notice” filing be made within 15 days of the receipt of money from the first investor located in that state.

Despite these requirements, with Rule 506 and many other offerings the filings can be made late as long as the filings are done before one of the investors files a lawsuit – and before the SEC or another securities agency starts an investigation. The SEC does not charge a fee for filing late, although the states where investors are located often charge a late fee of two or three times the regular filing fee (which often ranges between \$200 and \$800). That is a small price for getting the filings made.

Most private placement offerings also require that investors complete an investor questionnaire showing that they meet the financial or investment sophistication requirements for the particular offering. If questionnaires cannot be found for all the investors, it is a good idea to have them completed now. Investor questionnaires are valid only for a year anyway, so if an offeror wants to have an existing investor invest additional money more than a year later having another investor questionnaire completed is required. While some offerors are reluctant to ask existing investors to complete a questionnaire, the request can be explained as needing to have current updates for investors in order to comply with the securities laws.

Finally, although this will be discussed in more detail in a future article, merely having an investor check a box stating that he/she meets the investor qualifications for the offering (for example, with a Rule 506 offering, is accredited or sophisticated) is not sufficient. Instead, per the SEC the questionnaire must be more detailed.

In summary, it's not too late to clean up past offerings – and it should be done now.

For more information on securities laws, head to Background on the Securities Laws: http://thecaliforniasecuritiesattorneys.com/?page_id=41.

--Bruce E. Methven

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