

Who Can Sell an Offering? -- Bruce E. Methven

Given the securities laws, one probably ought not to be surprised that there are restrictions on who can be involved in the sale of an offeror's securities. Generally the top officers of the company can sell the securities, although there are restrictions on how they can be paid for this -- and they cannot have been involved in past securities violations.

Properly licensed securities brokers can sell securities of course. The problem is that securities brokers will almost never get involved with an offering unless a lot of money is being raised (so their percentage commissions generate a large dollar amount) and they feel it will be easy to sell the securities.

Outside of securities brokers, basically the top managers of the offering are the ones who can talk with potential investors about the offering and make the sales of the offering.

There sometimes is a question as to who is a top manager. For a corporation the president, corporate secretary, chief financial officer -- or an officer who has been expressly given the authority by the board or bylaws to sign documents and share certificates -- can raise money without being licensed. With an LLC it is usually the manager(s); with limited partnerships it is usually the general partner(s).

Other types of employees cannot sell the securities under any circumstances. Independent contractors cannot sell the securities either. ("Finders", if allowed, can only introduce the company to potential investors, and cannot sell the offering.)

There are restrictions on how top managers selling the securities can be compensated. They cannot receive a commission or other performance-based compensation for selling the securities. They can only be paid on a fixed basis (salary or hourly) and, in addition, must have substantial duties beyond raising money.

Further, under federal law, the top manager of an issuer who is selling the securities must:

- 1) not be subject to the so-called "bad boy" provisions, which generally prevent offerings from being made by anyone who is currently the subject of a securities investigation or who has been the subject of a securities-related order, judgment, decree, etc. during the last five years; and
- 2) not at the time of the sales be an "associated person" of a broker or dealer; and
- 3) not have been a broker or dealer, or an associated person of a broker or dealer, within the preceding 12 months.

Despite these restrictions, it is almost always the top managers of the offering company who sell the offering. As long as the top officers are not receiving performance-based compensation for the sales, have other company duties and are not subject to the "bad boy" restrictions, they may sell the securities.

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For more information on securities laws, head to Background on the Securities Laws:

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