

Securities Law Compliance Manual

for Private Placement of Securities



2009 edition

Jerold N. Siegan
ARNSTEIN & LEHR LLP

120 S. Riverside Plaza, Suite 1200
Chicago, Illinois 60606
p. 312.876.7874 f. 312.876.6274
jnsiegan@arnstein.com
www.arnstein.com

SECURITIES LAW AND COMPLIANCE MANUAL

for Private Placement of Securities

Jerold N. Siegan

120 SOUTH RIVERSIDE PLAZA
SUITE 1200
CHICAGO, ILLINOIS 60606
P. 312.876.7874
F. 312.876.0288
JNSIEGAN@ARNSTEIN.COM

ARNSTEIN & LEHR LLP

Copyright 2009, Arnstein & Lehr LLP
All Rights Reserved

TABLE OF CONTENTS

INTRODUCTION.....	1
What is a “Private Placement?”.....	1
What is a Security?.....	2
REGULATION D.....	2
General.....	2
The Regulation D Exemptions.....	3
Definition of “Accredited Investor”.....	5
Regulation D Information Disclosure Requirements.....	6
When Information Must be Furnished.....	6
Rules 505 and 506 - Type of Information to be Furnished [Rule 502 (b)(2)]	7
Non-Financial Statement Information.....	7
Financial Statement Information.....	7
Limitations on the Manner of Offering the Securities.....	9
Limitations on Re-Sales of the Securities.....	9
Rule 504 Exceptions to the Manner of Offer and Re-Sale Limitations.....	10
Integration of offerngs.....	10
Filing of Notice of Sales - Form D.....	11
Steps for Complying with Regulation D.....	11
Posting the PPM on your Issuer’s website.....	12
CONSEQUENCES OF A NON-EXEMPT OFFER.....	13
FRAUD.....	14
INVESTOR SUITABILITY STANDARDS.....	14
COMPLIANCE WITH STATE BLUE SKY LAWS.....	17
DISTRIBUTION OF THE PPM AND EXHIBITS AND THE SUBSCRIPTION DOCUMENTS.....	18
RESTRICTIONS ON ALTERING PPM.....	18
AMENDING OR SUPPLEMENTING THE PPM.....	18
PROHIBITION AGAINST UNAPPROVED LITERATURE.....	18
BROKER-DEALERS; COMPENSATION.....	19
FINDERS.....	19
MAINTAIN A CONTROL LOG.....	20
COPIES OF ORGANIZATIONAL DOCUMENTS OF ENTITY INVESTOR.....	20
RECAP.....	20
CONCLUSION.....	23
EXHIBIT – CONTROL LOG.....	24

INTRODUCTION

Generally speaking, there are two ways for a corporation, limited liability company, limited partnership, or other entity (“Issuer”) to offer and sell its securities; either (i) pursuant to a registration statement filed with the U. S. Securities & Exchange Commission (“SEC”) under the Federal Securities Act of 1933, as amended (the “1933 Act”); or (ii) pursuant to one of the various exemptions from such securities registration requirements. One of the most commonly used securities registration exemptions is the so called “private placement” exemption.

The purpose of this Compliance Manual is to present in “non-lawyer” terms those things that the Issuer must do in order to qualify for one of the available “private placement” exemptions from the securities registration requirements under the 1933 Act. The consequences of failing to qualify for an exemption from the securities registration requirements are significant and grave. In order to qualify for an exemption from the securities registration requirements, the Issuer must satisfy specified obligations under both the Federal and applicable State securities laws (“Blue Sky Laws”) relating to (i) disclosure of material information to prospective investors and (ii) the manner in which the offering is conducted. If the offering does not satisfy the disclosure and the manner of offering requirements as needed to qualify for an exemption, the offering will violate the applicable laws and give the investors the right to rescind their purchase of the securities. This means that the Issuer (including its principals) will be personally liable to repay the investment to such investor.

What is a “Private Placement?”

A “private placement” of securities is an offering of securities that is not a “public offering.” A “public offering” is an offering where the Issuer has registered the securities with the SEC (and the securities departments of the States in which the securities are to be offered) and allows the Issuer to sell the securities to the public in general. In a public offering the Issuer may publicly announce and advertise the offering and publicly solicit prospective investors to invest in the offering. The issuer may offer the securities through the use of newspapers, magazines, and radio and television broadcasts. There are no limitations on the number of purchasers and no requirements as to the level of the investor’s investment sophistication. In a public offering, the Issuer will be required to prepare and file a registration statement with the SEC that discloses all material information (as required by SEC rules) including information regarding the Issuer, its business, industry and management, the securities being offered and other factors that investors should consider when making a decision regarding an investment in the securities.

A private placement is an offering that is exempt from the securities registration requirements. A private placement (unlike a “public offering”) is not an offering of securities to the general public and may not involve any form of general announcement, general solicitation, advertising or any seminar or meeting whose attendees have been invited by a general solicitation or advertisement.

A private placement is generally considered a “transaction exemption” from the 1933 Act’s securities registration requirement. This means that the offering, which is the “transaction,” is exempt from the registration requirements. However, neither the “securities” themselves nor the Issuer are exempt. Accordingly, once the offering (i.e., the transaction) is complete, if the Issuer desires to conduct another offering, the securities must either be registered or offered pursuant to one of the available securities registration exemptions. Further the private placement exemption is available only to the Issuer and therefore any purchaser who desires to re-sell his securities must either register the securities or sell the securities pursuant to an exemption from the securities registration requirements (i.e., Rule 144).

What is a Security?

It is important for the Issuer to understand that the definition of a “security” is very broad and includes stock, treasury stock, note, debenture, evidence of indebtedness, an interest in an oil or gas wells or mineral rights, a limited partnership interest or a limited liability company interest an option, a put, a call, and a right convertible into a security. Under the 1933 Act, a “security” also includes an “investment contract” which term has been used by the courts and the SEC to expand the definition of security to include other and often exotic investment instruments and investment vehicles.

REGULATION D

General

The 1933 Act and the rules adopted thereunder, provide several transaction exemptions for “private placements.” The principal exemptions are contained in Sections 4(2) and 4(6) of the 1933 Act and Regulation D adopted thereunder (“Regulation D”). Additionally Regulation D, which is the most commonly used basis for a private placement, contains three separate exemptions which are based on the amount of funds sought to be raised from the offering. This Compliance Manual will discuss each of the exemptions enumerated in Regulation D.

Regulation D is a “safe harbor” exemption from the securities registration require-

ments under the 1933 Act that was adopted by the SEC for the purpose of providing Issuers a more objective way of conducting an exempt private placement. Regulation D sets forth specific things that the Issuer must do and specific things that the Issuer must not do in order to qualify for the Regulation D exemption. The Issuer has the responsibility and burden to prove (if challenged) that it has satisfied the conditions and requirements of Regulation D in order to claim the exemption. Regulation D sets forth two categories of compliance obligations that the Issuer must satisfy as follows:

- (1) the requirement to disclose material information to prospective investors; and
- (2) the requirement to comply with the manner in which the offering is conducted.

The Regulation D exemption is available only to the Issuer of the securities and therefore is not available for the re-sale of securities by a person who holds or owns the security.

Also, it is important to mention that Regulation D does not establish an exemption from the antifraud, civil liability or other provisions of the Federal securities laws. Regulation D states that Issuers have an obligation to provide such further material information, if any, as may be necessary to make the information required under Regulation D, in light of the circumstances under which it is furnished, not misleading.

The Regulation D Exemptions

There are three exemptions set forth in Regulation D which are based upon the amount of the offering. The exemptions establish various conditions as follows:

- (i) offerings not exceeding \$1,000,000 [Rule 504];
- (ii) offerings not exceeding \$5,000,000 [Rule 505]; and
- (iii) offerings without regard to a dollar amount of the offering [Rule 506].

The Rule 504 Exemption:

- is available only to an Issuer that is not (1) a SEC reporting company (i.e., the Issuer is not subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (the “1934 Act”); (2) an investment company; or (3) a “Shell Company” (i.e., a development stage company that

either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisitions with an unidentified company or companies or other entity).

- is available only for offerings that do not exceed \$1,000,000, less the aggregate offering price for all securities sold by the Issuer within the 12 months before the start of and during the offering in reliance on any exemption under Section 3(b) under the 1933 Act.
- Rule 504 does not impose a limit on the number of investors who purchase the securities.

The Rule 505 Exemption:

- is available for offerings that do not exceed \$5,000,000, less the aggregate offering price for all securities sold within the 12 months before the start of and during the 505 Offering in reliance on any exemption under section 3(b) under the 1933 Act;
- limits the number of purchasers to no more than 35 (non-accredited investors) but an unlimited number of “accredited investors”; and
- is not generally available for the securities of any Issuer described in Rule 262 of Regulation A (which is another exemption from the securities registration requirements).
- The Rule 506 Exemption:
- has no limitations as to the amount of the offering;
- limits the number of purchasers to no more than 35 (non-accredited investors) but an unlimited number of “accredited investors”; and
- each purchaser who is not an “accredited investor” either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment and the Issuer reasonably believes immediately prior to making any sale that such purchaser comes within this description.

Definition of “Accredited Investor”

As mentioned above, Rules 505 and 506 each limit the number of investors to 35. Excluded from the calculation of the 35 maximum are “accredited investors” as defined in Rule 501 of Regulation D. There are 8 categories of investors that are deemed to be “accredited investors.”

If the investor is a natural person, the investor is “accredited” if he or she (i) has individual net worth, or joint net worth with that person’s spouse, at the time of his purchase exceeds \$1,000,000, or (ii) had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person’s spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

Regulation D lists various entities that are deemed to be accredited investors, including, but not limited to:

a bank as defined in section 3(a)(2) of the 1933 Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the 1933 Act whether acting in its individual or fiduciary capacity;

a broker or dealer registered pursuant to section 15 of the 1934 Act;

an insurance company as defined in section 2(a)(13) of the 1933 Act;

an investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act;

a Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958;

a plan established and maintained by a State, its political subdivisions, or any agency or instrumentality of a State or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000;

an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan as-

sociation, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors; any trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a “sophisticated person” as described in Rule 506(b)(2)(ii).

Regulation D Information Disclosure Requirements

When conducting a private placement, the Issuer will give to prospective investors a disclosure document that discloses material information about (i) the Issuer, including its business, industry, and management, (ii) a description of the securities being offered, (iii) a description of the offering and whether a professional placement agent will assist in the offering, and (iv) the business, economic and other risks of investing in the securities being offered by the Issuer. This disclosure document is often called a PPM, private placement memorandum, COM, confidential offering memorandum, offering memorandum, Term Sheet or similar name and will also include subscription documents including a subscription instructions, subscription agreement and investor/accredited investor questionnaire. The type of information required by Regulation D (and to be contained in the PPM) is set forth below. Additionally, the information provided to prospective investors should also be sufficiently complete to meet the SEC’s anti-fraud rules – specifically such further information, if any, as may be necessary to make the information required to be furnished, in light of the circumstances under which it is furnished, not misleading.

When Information Must be Furnished

Rule 504 Offerings – No specified information is required to be furnished to investors

Rule 505 – Must furnish the information specified below [Rule 502 (b)(2)]

Rule 506 - Must furnish the information specified below [Rule 502 (b)(2)]

Accredited Investors - No specified information is required to be furnished to accredited investors

Rules 505 and 506 - Type of Information to be Furnished [Rule 502 (b)(2)]

1. If the Issuer is not a SEC reporting company (i.e., not subject to the reporting requirements of Sections 13 or 15(d) of the 1934 Act), at a reasonable time prior to the sale of the securities the Issuer must furnish to the purchaser, to the extent material to an understanding of the Issuer, its business and the securities being offered the following information:

Non-Financial Statement Information

Generally the Issuer must disclose sufficient material information about (i) the Issuer, including its business, industry, and management, (ii) a description of the securities being offered, (iii) a description of the offering and whether a professional placement agent will assist in the offering, and (iv) the business, economic and other risks of investing in the securities being offered by the Issuer to enable the purchaser to make an informed investment decision.

[Specifically, if the Issuer can use Regulation A, then same kind of the information required in Part II of Form 1-A under Regulation A. If the issuer is not eligible to use Regulation A, then the same kind of information as required in Part 1 of a registration statement that the Issuer would be entitled to use.]

Financial Statement Information

Offerings up to \$2,000,000

The financial information as required by Article 8 of Regulation S-X, except that only the balance sheet (which shall be dated within 120 days from the date of the offering) must be audited.

Offerings up to \$7,500,000

The financial statement information required in Form S-1 for smaller reporting companies. If an Issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the Issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited. If the Issuer is a limited partnership and cannot obtain the required financial statements without unreasonable effort or expense, it may furnish financial

statements that have been prepared on the basis of Federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant.

Offerings over \$7,500,000

The financial statements as would be required in a registration statement filed under the 1933 Act on the form that the Issuer would be entitled to use. If an Issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the Issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited. If the Issuer is a limited partnership and cannot obtain the required financial statements without unreasonable effort or expense, it may furnish financial statements that have been prepared on the basis of Federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant.

2. If the issuer is a SEC reporting company (i.e., is subject to the reporting requirements of Sections 13 or 15(d) of the 1934 Act), at a reasonable time prior to the sale of securities, the Issuer must furnish to the purchaser the information specified in paragraph (A) or (B) below, and in either event the information specified in paragraph (C) below:
 - A. The Issuer's (i) annual report to shareholders for the most recent fiscal year, (ii) definitive proxy statement filed in connection with that annual report, and (iii) if requested by the purchaser in writing, a copy of the issuer's most recent annual report on Form 10-K.
 - B. The information contained in an annual report on Form 10-K or in a registration statement on Form S-1 or S-11 on Form 10, whichever filing is the most recent form required to be filed.
 - C. The information contained in any reports or documents required to be filed by the issuer under Sections 13(a), 14(a), 14(c), and 15(d) of the 1934 Act since the distribution or filing of the report or registration statement specified in paragraphs (A) or (B) above, and a brief description of the securities being offered, the use of the proceeds from the offering, and any material changes in the Issuer's affairs that are not disclosed in the SEC documents furnished.

3. At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under Rule 505 or Rule 506, the Issuer must furnish to the purchaser a brief description in writing of any material written information concerning the offering that has been provided by the Issuer to any accredited investor but not previously delivered to such unaccredited purchaser. The Issuer must furnish any portion or all of this information to the purchaser, upon his written request a reasonable time prior to his purchase.
4. IV. The Issuer must also make available to each purchaser at a reasonable time prior to his purchase of securities in a transaction under Rule 505 or Rule 506 the opportunity to ask questions and receive answers concerning the terms and conditions of the offering and to obtain any additional information which the Issuer possesses or can acquire without unreasonable effort or expense that is necessary to verify the accuracy of information furnished to the purchaser.
5. At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under Rule 505 or Rule 506, the Issuer shall advise the purchaser of the limitations on resale as set forth below. Such disclosure may be contained in other materials required to be provided by this paragraph.

Limitations on the Manner of Offering the Securities

Regulation D specifically prohibits the offer or sale of securities by any form of general solicitation or general advertising, including, but not limited to, the following:

Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; and

Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

Limitations on Re-Sales of the Securities

Section 502(d) specifically states that securities purchased in a transaction under Regulation D cannot be resold without registration or an exemption therefrom. Also the Issuer must take reasonable care to assure that the limitations on resale are satisfied. The Issuer may demonstrate that it has done so by: (i) making reasonable inquiry to determine if the purchaser is acquiring the securities for himself or for other persons; (ii) provide written disclosure to each purchaser prior to the sale that the securities have not been registered under the Act and, therefore, cannot be resold unless they are

registered under the Act or unless an exemption from registration is available; and (iii) place a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under the Act and setting forth or referring to the restrictions on transferability and sale of the securities.

Rule 504 Exceptions to the Manner of Offer and Re-Sale Limitations

Notwithstanding the general limitations on the manner of the offering and the re-sale of the securities, such limitations do not apply to Rule 504 offerings that satisfy certain enumerated conditions.

Integration of offerings

The SEC and the Courts have developed the concept of integrating two or more offerings for the purpose of prosecuting a case that claims the offering (or a series of offerings) did not comply with the conditions and requirements of Regulation D. Accordingly, care must be taken to assure that the current offering will not be “integrated” with a previous offering and thereby resulting in the failure of both offering to comply with the conditions and requirements of Regulation D.

In this regard, Regulation D provides that all sales that are part of the same Regulation D offering must meet all of the terms and conditions of Regulation D.

Regulation D also provides that offers and sales that are made more than six months before the start of a Regulation D offering or are made more than six months after completion of a Regulation D offering will not be considered part of that Regulation D offering, so long as during those six month periods there are no offers or sales of securities by or for the Issuer that are of the same or a similar class as those offered or sold under Regulation D, other than those offers or sales of securities under an employee benefit plan as defined in Rule 405 under the 1933 Act.

In a 1962 SEC Release, the SEC enumerated certain factors that should be considered in determining whether offers and sales should be integrated for purposes of the private placement exemption. Those factors are specifically enumerated in and adopted by Regulation D as follows:

- Whether the sales are part of a single plan of financing;
- Whether the sales involve issuance of the same class of securities;
- Whether the sales have been made at or about the same time;

- Whether the same type of consideration is being received; and
- Whether the sales are made for the same general purpose.

There is no guidance provided as to how or when to apply any or all of these factors or whether any factor is more significant than another.

Filing of Notice of Sales - Form D

Generally the Issuer is required to file a notice on Form D with the SEC no later than fifteen (15) days after the first sale of securities in the Offering. There is no Federal filing fee.

The Issuer may want to file the Form D on the commencement of the Offering, and thereafter, amend the Form D as additional sales are made.

Steps for Complying with Regulation D

The Issuer should thoroughly and carefully read the PPM to make sure that the PPM does not contain any misstatements of material facts or omissions of material facts, necessary in order to make the statements made in the PPM not misleading.

If any of the facts set forth in the PPM change after the date of the PPM, the Issuer should notify its legal counsel immediately so that a determination can be promptly made as to whether an amendment or supplement to the PPM will be required.

The Issuer should not make any revisions to the PPM or to make written or oral statements when speaking with prospective investors (or their agents) that contradicts or change the disclosures contained in the PPM without first consulting with legal counsel.

The Issuer should not give prospective investors any assurances regarding the return on investment or the success of the Issuer and its business.

The Issuer should not use any sales literature that has not been reviewed and approved by its legal counsel.

The Issuer may not use any form of general solicitation or general advertising.

In order for the Issuer to have sufficient time to comply with the offering requirements under the applicable State Blue Sky Laws, the Issuer should advise its legal counsel **in advance** of any offers and any sales of the securities to prospective investors who live

outside of your primary State (i.e., Illinois) so that the Blue Sky Laws can be reviewed and legal counsel can determine what, if any, additional requirements are imposed by that particular State's securities laws. Some states have **pre-offering** filing requirements, some states have **pre-sale** filing requirements and some States have **post-sale** filing requirements; further, some of the States require the filing of an offering notice with the State fifteen (15) days before the Issuer makes the offer in that State. Please note that the type of investor (accredited or non-accredited) may also determine the filing obligations of a particular State. The failure to meet the filing requirements of a particular State's Blue Sky Laws, may disqualify the offering from an exemption in that State so ample time will be needed to review the laws and make any filings.

The Issuer should not invite any person to any investor meeting that the Issuer does not know personally.

The issuer must review the subscription documents from each and every purchaser and verify that all items of the required subscription documents are completed and executed.

Generally the question of whether the Issuer has satisfied all conditions of an available exemption and, thus, qualified for such exemption will only be raised if a lawsuit is filed (by either an investor, the SEC or a State securities commission) which challenges the Issuer's compliance with the applicable securities laws. A typical claim would be that the Issuer sold unregistered securities without an available exemption under the applicable securities laws and therefore the investor is entitled to rescind the purchase.

Posting the PPM (or announcing the private placement) on your Issuer's website

Many of Issuers have asked whether they can post the PPM or announce their private placement on their website. As noted above, the exemptions under Regulation D (with only minor exceptions under Rule 504) strictly prohibit the Issuer and persons acting on the Issuer's behalf from engaging in any form of general solicitation or advertising in connection with a private offering. The SEC views the posting of private placement documents on a website, absent procedures that strictly limit document access solely to accredited investors, as a general solicitation that disqualifies the offering from the private offering exemption. The foregoing notwithstanding, the general view of the SEC is that a private offering may be conducted on-line if a registered broker-dealer, as agent for the Issuer, establishes that a substantive, pre-existing relationship existed with each investor to whom an offer was communicated, and confirms that each investor is accredited and sophisticated within the meaning of Regulation D. Recently, however, third-party service providers who are neither registered broker-dealers nor

affiliated with registered broker-dealers, have established websites that invite potential investors to become “self-accredited” as a prelude to participation in a later offering. In particular, these third-party service providers sites often permit investors to attain “accreditation” status merely by “checking a box” on a standardized form, rather than completing an extensive questionnaire which would provide information needed to form a reasonable belief as to the investor’s accredited status or level of sophistication. The SEC has cautioned that website operators that allow “self “accreditation may be engaged in a general solicitation and that they must determine whether such service constitutes “effecting transactions in securities or attempting to induce the purchase or sale of securities” and thereby triggering the requirement to register as a broker-dealer. As this is a fast changing issue, the Issuer should consult with legal counsel before posting the private placement documents or announcing the private placement on its website.

CONSEQUENCES OF A NON-EXEMPT OFFER AND SALE OF SECURITIES

The consequences of failing to qualify for an exemption from the securities registration requirements are significant and grave. If the Issuer fails to comply with all of the requirements of the particular claimed exemption, the Issuer will not have perfected your claim to the exemption for this offering. Unless the Issuer has perfected a claim for another available self-executing exemption, the offering will have been made in violation of the Federal and the applicable State securities laws. In many instances, such non-compliance will give rise to the rescission election mentioned earlier.¹ In such event the Issuer, its directors and executive officers, **personally, will become the insurers of the deal and guaranteeing that no matter what happens, the investors will be able to rescind their investment and get back their investment from the Issuer personally.** In addition, the Issuer may become the subject of a State or SEC investigation.²

1 Also, many State securities laws provide for an award of attorneys fees to a successful suing investor. See e.g., Section 13A.(2) of the Illinois Act

2 The SEC and the state securities administrators, of course, could file a lawsuit or take other administrative action to enforce the securities registration requirements of their respective laws, notwithstanding the profitability of the deal.

As a practical matter, a lawsuit would only be filed by an investor if the investment lost money.

Exemptions from the securities registration requirements of Federal and State securities laws are narrowly construed by the Courts and governmental agencies. Accord

ingly, the Issuer will need to strictly adhere to the legal requirements for making a non-registered offering of the securities to perfect and preserve the claimed exemption.

Further, in order to recover his investment, an investor need not show that the deal was good or bad or that the Issuer acted in bad faith. To be able to obtain rescission, all the investor needs to show is that the Issuer offered and sold a security that should have been registered under the securities registration requirements of Federal and State securities laws, that the security was not registered, and that no securities registration exemption was perfected.

FRAUD

The exemptions discussed in this Compliance Manual only apply to exemptions from the registration provisions under the applicable securities laws. The exemptions do not exempt the Issuer or its executive officers and directors from the anti-fraud provisions (or the disclosure requirements) of the Federal or State securities laws. If the PPM contains any misrepresentation of a material fact or omits to state a material fact necessary to make the statements in the PPM, in light of the circumstances in which they were made, not misleading, then the Issuer its executive officers and directors may be personally liable to purchasers of the securities who may sue to rescind the sale or for monetary damages. In connection with assisting the Issuer in the preparation of the PPM, your legal counsel will specifically rely upon the information the Issuer has provided regarding the Issuer and they will also rely upon the Issuer's review of the PPM to assure that the PPM does not contain any misrepresentation or misstatement of a material fact and does not omit to state a material fact necessary to make the statements in the PPM, in light of the circumstances in which they were made, not misleading.

INVESTOR SUITABILITY STANDARDS

The Issuer should establish investor suitability requirements for prospective investors in order to establish that the prospective investment in the Issuer's securities is suitable for each investor. Such suitability standards should be contained in the PPM. The purchaser should also represent and warrant to the Issuer that such investor satisfies or

exceed the suitability standards for this investment. The suitability standards should include financial suitability standards as well as investor sophistication suitability standards, including the following:

1. the purchaser understands that the securities have not been registered under the 1933 Act or the securities laws of any State, based upon an exemption from such registration requirements for non-public offerings pursuant to Regulation D or other exemptions under the Securities Act and an exemption from such registration requirements under the applicable State securities laws; and
2. the purchaser's legal residence and domicile are in the State or jurisdiction approved for offering of the Securities by legal counsel for the Issuer; and
3. the purchaser has read and understands the terms, rights, duties, and obligations set forth in the subscription agreement and any other material agreement (i.e., operating agreement); and
4. the purchaser understands that the securities are and will be "restricted securities," as defined in Rule 144 promulgated under the 1933 Act; and
5. the purchaser is acquiring the securities solely for his/her/its own account, for investment purposes only, and not with a view towards the resale or distribution thereof; and
6. the purchaser either (alone or together with his/her/its Purchaser Representative, if any) has had a reasonable opportunity to ask questions of and receive answers from the Issuer, and all such questions, if any, have been answered to the full satisfaction of the purchaser and the purchaser has had the opportunity to receive all other relevant documents concerning the Issuer and the offering; and
7. the purchaser either alone or together with his/her/its Purchaser Representative, if any, has the requisite knowledge and expertise in financial and business matters to be capable of evaluating the merits and risks involved in an investment in the securities; and
8. the purchaser acknowledges that an investment in the securities entails a number of very significant risks and funds should only be invested if the purchaser is able to withstand the total loss of his/her/its investment; and
9. the purchaser acknowledges and agrees that except as set forth in the PPM, and the subscription agreement, no representations or warranties have been made to the purchaser by the Issuer, or its officers or directors or any agent, employee or affiliate of the Issuer and in entering into this transaction the purchaser is not relying upon any information, other than the information contained in the PPM and any additional information furnished in writing by the Issuer and the results of independent investigation by the purchaser (and his Purchaser Representative, if any); and
10. the purchaser understands that the securities are being offered and sold expressly conditioned upon the satisfaction of specific exemptions from the registration re-

quirements of Federal and State securities laws and that the Issuer is relying upon the truth and accuracy of the representations, warranties, agreements, acknowledgments and understandings of the purchaser set forth herein and in the related investor questionnaire in order to determine the applicability of such exemptions and the suitability of the purchaser to acquire the securities, and the purchaser acknowledges that it is solely the purchaser's responsibility to satisfy himself/herself/itself as to the full observance by this offering and the sale of the securities to purchaser of the laws of any jurisdiction outside the United States and the purchaser has done so; and

11. the purchaser has full power and authority to execute and deliver the subscription agreement and to perform the obligations of the purchaser thereunder and the subscription agreement is a legally binding obligation of the purchaser enforceable against purchaser in accordance with its terms; and
12. the purchaser, if a natural person, has reached the age of majority and is mentally competent to complete and execute the appropriate subscription documents; and
13. the purchaser is able to bear the economic risk of even a total loss of his/her/its investment and are otherwise financially suitable for this investment; and
14. the purchaser has sufficient net worth to assume the risks associated with this investment and has no need for liquidity with respect to the investment in the securities to meet his/her/its current or future needs; and
15. the purchaser acknowledges that he/she/it has been advised to consult with purchaser's own attorney regarding legal matters concerning the Issuer and to consult with purchaser's tax advisor regarding the tax consequences of investing in the Issuer; and
16. the purchaser's overall commitment to investments which are not readily marketable is not disproportionate to the purchaser's net worth and investment in the securities will not cause the purchaser's overall commitment to become excessive. Purchaser is familiar with the nature of, and risks attendant to, investments in securities of the type being subscribed for and has determined, in consultation with his Purchaser Representative, if any, that the purchase of such securities is consistent with the purchaser's investment objectives; and
17. the purchaser was not induced to invest in the securities by any form of general solicitation or general advertising, including, but not limited to, the following: (a) any advertisement, article, notice or other communication published in any newspaper, magazine or similar media or broadcast over the television or radio or the internet; or (b) any seminar or meeting whose attendees have been invited by any general solicitation or general advertising; and
18. in making an investment decision, the purchaser understands and acknowledges that he/she/it is expected to conduct his/her/its own due diligence and must rely

on his, her/its own examination of the Issuer and the terms of the offering, including the merits and risks involved, some, but not all, of which are described in the section headed “Risk Factors” in the PPM; and

19. in making an investment decision, the purchaser has relied only on his/her/its own tax advisor with respect to the Federal, State, local and foreign tax consequences arising from an investment in the securities.

COMPLIANCE WITH STATE BLUE SKY LAWS

Generally, each State securities law has a substantially similar exemption to either Section 4(2) and/or Regulation D for non-public (private placement) offers and sales of securities, as well as sales to accredited investors. However, many states have their own unique approach to qualifying or perfecting an exemption from that State’s securities registration requirements.

- Some states require pre-filing of any offering materials with the State securities commissioner several days before making an offering to residents in the State.
- Some states require the filing of the offering materials contemporaneous with, or shortly after, the offering commences in that State.
- Some states merely require the filing of a notice (often a Form D) before or after the commencement of offering the securities in that State, or within a certain number of days following the conclusion of the offering in that State.
- Some states require payment of filing or examination fees in connection with the foregoing.

The nature and depth of Blue Sky compliance will also depend on the specific exemption relied upon (e.g., Rule 504, Rule 505 or Rule 506).

As soon as possible, the Issuer should advise its legal counsel in writing of the states in which the Issuer intends to offer the securities so legal counsel can review the applicable law and provide the Issuer with the guidance necessary to qualify for an exemption in those states. Often legal counsel will prepare a Blue Sky Law Memorandum covering each State that the Issuer includes in its list.

DISTRIBUTION OF THE PPM AND EXHIBITS AND THE SUBSCRIPTION DOCUMENTS

The Issuer must take care to assure that each prospective investor is given a copy of the PPM, including all exhibits and any amendments and/or supplements to the PPM. The Issuer must also exercise care to review each subscription to verify that the prospective investor has completed all required information. The Issuer will also need to determine how the prospective investor intends to own his/her/its securities, individually or jointly, or through an entity. Additionally, the Issuer will need to get the complete name in which the securities will be held.

RESTRICTIONS ON ALTERING PPM

The issuer should never alter the final PPM, its exhibits, supplements or underlying documents without first discussing the change with legal counsel. Improperly altering the PPM and its ancillary documents could result in the Issuer losing the availability of the exemption, and become subject to substantial liability under the Federal and State securities laws as discussed above.

AMENDING OR SUPPLEMENTING THE PPM

If any information set forth in the PPM, its exhibits, supplements or underlying documents becomes outdated or changes, or if the Issuer discover a mistake in the information disclosed in any of such documents, the Issuer should contact its legal counsel immediately so it can evaluate the changed or new information or mistaken disclosure and advise the Issuer whether the changed or new information or mistaken disclosure is material and requires either an amendment or a supplement to the PPM or ancillary documents. If legal counsel determines that it is necessary to revise the disclosures, either an amendment or supplement to the PPM should be prepared to update or correct the disclosures. Thereafter, the Issuer will need to distribute the amendment or supplement to prospective investors, along with the PPM and furnish a copy of the amendment or supplement to the existing investors.

STRICT PROHIBITION AGAINST USE OF UNAPPROVED SALES LITERATURE

Due to the severe consequences, including potential substantial liabilities, of failing to perfect an exemption from the securities registration requirements, it is extremely important that the Issuer take every precaution to follow the instructions and advice

regarding the offering of the securities . In this regard, the Issuer should not use and should not allow any of its agents or employees use any sales literature or written information, other than (i) the PPM, (ii) the subscription agreement, or (iii) any other written materials that have been approved in writing for use in the offering. Further, the Issuer should not make and should not allow any of its agents or employees to make any oral promises or make any disclosures or representations that are not contained in or consistent with the information contained in the PPM or the subscription agreement, unless such statements have first been reviewed and approved in writing. The Issuer's use of any written information or oral disclosures or statements that have not approved is very risky and could cause the Issuer to lose or be unable to perfect an intended exemption with the resulting severe consequences. Examples of additional sales literature include, but are not limited to, the following:

- Letters
- Brochures/pamphlets
- Video recordings
- Tape recordings
- E-mails

Any of such foregoing documents will be considered to be a part of the PPM and, if improperly prepared, could result in losing the availability of the exemption, and becoming subject to substantial liability under the Federal and State securities laws.

BROKER-DEALERS; COMPENSATION

If the PPM contemplates that a licensed broker-dealer firm will act as placement agent for the offering the PPM should set forth the amount of the commission that will be paid to such broker-dealer.

FINDERS

Often the Issuer will want to use a “finder” to assist in the offer and sale of the securities. Generally a “finder” is someone who is not a licensed broker-dealer. The SEC and FINRA frown upon the use of finders and the payment of fees to finders. In certain states, the use of a non-licensed broker-dealer finder could result in a violation of that State's Blue Sky laws and loss of the securities registration exemption and may give rise to rescission rights for the purchaser. Accordingly, before engaging a finder to assist the Issuer in the offering, the Issuer should consult with its legal counsel.

MAINTAIN A CONTROL LOG

In connection with the offering of the securities, it is very important that the Issuer keep complete and accurate records regarding each prospective investor to whom it gives a PPM and each purchaser of securities. The Issuer should maintain complete and accurate records regarding the number of offers it makes of the securities to avoid being deemed to be engaged in a “general solicitation” which would disqualify the Issuer from claiming the intended exemptions. To qualify for any of the claimed exemptions, the Issuer may need to be able to demonstrate that it had reasonable grounds to believe, among other things, that the investment is suitable for the investor. Accordingly, the Issuer should keep a record of the date on which it reviewed each purchaser’s subscription documents, and whether such information provided by each purchaser is complete and/or whether the Issuer need more information from any purchaser.

To assist the Issuer in maintaining a record of the above information, the Issuer should consecutively number each PPM that it printed and distributed to anyone. To further assist the Issuer, the Issuer should use a form of Control Log to record, among other information, the following: the number of the PPM; the name of the prospective investor to whom that numbered PPM has been given; the date the Issuer reviewed the purchaser’s subscription documents and whether such information is complete and/or whether you need further information; whether the prospective investor has subscribed to purchase the securities and whether the Issuer accepted such subscription; the number of securities subscribed for by such purchaser and the subscription amount paid; and the State of residence of the prospective investor. A form of a Control Log is attached to this Compliance Manual.

Please note that it is very important that the Issuer should not accept a subscription from any investor who has not provided to you a fully completed and executed set of subscription documents.

COPIES OF ORGANIZATIONAL DOCUMENTS OF ENTITY INVESTORS

Each purchaser that is an entity (trust, corporation, partnership/limited liability company or retirement plan) is required to furnish to the Issuer a true and correct copy of the formation documents and any other governing documents (and any amendments thereto) for the formation and governance of such entity and the resolution of the principals and/or the board of directors or other applicable fiduciary body authorizing the purchase of the securities. These documents should be furnished to the Issuer to-

gether with the entity's subscription documents. Entity investors should be instructed that their subscription will not be accepted until these documents are furnished to the Issuer. Accordingly, the Issuer should not accept any subscription from an entity unless and until the Issuer received copies of such documents. When the Issuer receives such organizational documents and authorizations, it should keep such documents in a safe and secure location.

RECAP

Do not offer the Securities or to invite prospective investors to a meeting to learn about the Issuer through use of:

- any form of general solicitation; or
- general advertising; or
- use any article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio or the Internet.

Do not give any prospective investors any written or other information other than the information set forth in the PPM without prior review of such information and written approval by legal counsel of the use of such information.

Do not alter the PPM.

Do not tell the prospective investors of any projected return on their investment except as contained in the PPM.

Do not explain any tax benefits of an investment in the Securities to any prospective investor, except as set forth in the PPM.

Do not provide or offer any assurances of a return on investment or financial projections.

Do not invite any person to a meeting that you do not personally know.

Do not accept a subscription from any prospective investor who does not fully complete all of the information required by the subscription documents.

Do not state or otherwise indicate that the securities may be re-sold at later date or that there will be a market for the securities.

Do not make any oral promises to investors regarding the investment.

Do not use any sales literature that has not been approved by legal counsel.

Do not pay anyone a sales commission for or on account of such person's assistance in selling the securities unless the person is a licensed placement agent (licensed securities broker-dealer).

Do not use anyone to assist you in the offer and sale of the Securities unless the person is a licensed securities broker-dealer.

Do not use or pay a sales commission to any licensed securities registered representative unless such person's broker-dealer firm has approved the offering.

* * *

Do number each PPM.

Do maintain the Control Log attached to this Compliance Manual.

Do get copies of the organizational documents of each entity that subscribes for Securities.

Do get copies of the resolutions authorizing the officer, manager, trustee, etc. of the entity purchaser to execute the subscription documents and purchase the Securities.

Do make available to each prospective purchaser at a reasonable time prior to his/her/its purchase of the Securities, the opportunity to ask questions and receive answers concerning the terms and conditions of the offering and to obtain any additional information which the Issuer possesses or can acquire without unreasonable effort or expense that is necessary to verify the accuracy of information provided to the investor in the PPM.

CONCLUSION

Although this Compliance Manual may seem lengthy, it should be emphasized that it touches only the highlights of the subjects discussed. The laws and rules that govern the private placement process are complex and constantly changing, and this Compliance Manual provides only a general overview of some of these rules. Any misstep can subject the Issuer and its directors and officers, individually, to personal liability wherein they will become the guarantor of the investment, regardless of the Issuer's good faith.

Proceed with extreme caution. The Issuer should contact legal counsel for the slightest question regarding exemption availability, as it is more prudent to err on the side of caution rather than disqualify the offering from an otherwise available exemption.

LEGAL DISCLAIMER

While the information in this Regulation S Offering Compliance Manual is currently accurate, the Federal and various States' securities laws are subject to frequent amendments and modifications. This Regulation S Offering Compliance Manual is for informational purposes only and is not intended to be a comprehensive summary of every legal aspect of conducting a Regulation S off-shore offering of securities. Rather, this Regulation S Offering Compliance Manual is a general summary of some of the major issues and laws presently facing issuers of securities. This information should not be construed as legal advice or a legal opinion as to a particular situation or application. Further, this Regulation S Offering Compliance Manual does not create an attorney/client relationship between Arnstein & Lehr LLP and any readers or recipients of this Regulation S Offering Compliance Manual. Therefore, if your company is considering an off-shore offering of its securities or faced with a pending legal issue or question regarding an off-shore offering of its securities, we strongly encourage you to contact Arnstein & Lehr LLP to ensure that your company is in compliance with applicable securities laws and regulations.

CONTROL LOG

ABC, Inc.
 Offering of ___ Shares of Common stock
 Offering Memorandum dated _____, 200__

PPM #	Name of Prospective Investor	Number of Securities subscribed for (and \$ amount received)	The Investor has delivered a Completed Accredited Investor Verification (Indicate "YES" where appropriate)	Date that you reviewed the Subscription Book (Indicate whether (a) complete or (b) additional information is needed)	Subscription Accepted (Y/N) Date of Acceptance and # of Securities Purchased	State of Residence of the Purchaser
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						



About Jerold N. Siegan

Mr. Siegan, a Partner, has practiced law for more than 20 years. His practice is focused in the securities and corporate law areas. Mr. Siegan has substantial experience representing businesses in public and private securities offerings, as well as general corporate matters. He also represents clients in structuring, negotiating and documenting asset and stock acquisitions and sales, mergers, joint ventures and other business transactions. His clients are located throughout the country. He counsels both publicly and privately held businesses. Mr. Siegan's clients cover a broad range of industry segments, including telecommunications, software, internet service companies, securities broker/dealer firms

(i.e., underwriters and placement agents), merchant banking firms and general industrial firms, hedgefunds and real estate financing funds.

Professional Activities and Achievements

Mr. Siegan serves as outside general counsel and special counsel to publicly-held and privately-held businesses. He received the Illinois Secretary of State's Public Service Award for service as a member of its Securities Law Advisory Committee, and he co-authored amendments to the Illinois Securities Law of 1953. He also served as special securities counsel in the landmark case of Standard Oil and Exploration of Delaware, Inc., which approved a new financing technique, developed by Mr. Siegan, for raising capital for companies in Chapter 11 proceedings and resulting in a new public successor company.

Recent Publications and Lectures

Mr. Siegan has spoken on a broad range of topics relating to the securities law area at seminars sponsored by the Chicago Bar Association and Illinois Institute for Continuing Legal Education. He co-authored the chapter entitled "Considerations and Problems in Drafting Limited Partnership Agreement and Certificate," which appeared in the Real Estate Syndications text, published by the Illinois Institute for Continuing Legal Education. He also authored the articles "Legal or Illegal? Public Corporations Going Private," published in the Chicago Daily Law Bulletin;

Education

DePaul University (J.D., Dean's List, 1972)
University of Illinois (B.A., 1968)

Bar admissions

State of Illinois
U.S. District Court for the Northern District of Illinois
U.S. Court of Appeals for the Seventh Circuit
U.S. District of Columbia Court of Appeals

ARNSTEIN & LEHR LLP

Mid-market value. Large firm expertise.

Arnstein & Lehr LLP is one of the country's oldest and most respected law firms. Since its founding in 1893, the Firm has served clients – large and small – throughout the United States and in many foreign countries. More than a century later, Arnstein & Lehr has established itself as a sophisticated, full-service practice that addresses the diverse and complex needs of its clients with vision, expertise, and a commitment to quality and service.

Practice

As the dynamics of business, economics, technology, and communications have become increasingly complex, so also has the practice of law become more complex. We believe that the best results are achieved by drawing on our attorneys' exceptional talents and varied experiences. Attorneys from various practices work collaboratively to assist clients in achieving personal and business goals, structuring, negotiating and closing transactions, and handling disputed matters. We aim to become trusted advisors that clients can depend upon to deliver excellent legal counseling.

We practice in five main service groups – Business, Litigation, Local Government, Tax and Estate Planning, and Real Estate.

Chicago • Hoffman Estates • Springfield
Milwaukee • Coral Gables • Fort Lauderdale
Miami • Tampa • Boca Raton • West Palm Beach