

September 2008

SECURITIES LAW ALERT

SEC TO REQUIRE ELECTRONIC FILING OF FORM D AND ADOPTS SIGNIFICANT CHANGES TO THE TEXT OF FORM D

The Securities and Exchange Commission ("SEC") recently adopted rule amendments mandating the electronic filing of information required by Securities Act Form D through the Internet. Form D serves as the official notice of an offering of securities made without registration under the Securities Act of 1933, as amended (the "Securities Act") in reliance on an exemption provided by Regulation D. The amendments also substantially modify the content of Form D. The information required by Form D will be filed with the SEC electronically through a new online filing system that will be accessible from any computer with Internet access.

Electronic filing of Form D will be required on and after March 16, 2009.

The period from September 15, 2008 to March 16, 2009 will be a transition period in which electronic filing will be voluntary. During the transition period, issuers who choose not to file electronically can file on either the current Form D or the new Form D adopted under the rules.

The amendments will:

- mandate electronic filing of Form D information:
 - after a phase-in period during which electronic filing will be voluntary; and
 - through an online filing system that will
 - be accessible from any computer with Internet access; and
 - capture and tag data items, so that the data will be interactive and viewable in an easy-to-read format; and

- revise Form D's information requirements by:
 - permitting filers to identify all issuers in a multiple-issuer offering in one Form D filing;
 - deleting the current requirement to identify as "related persons" owners of 10 percent or more of a class of the issuer's equity securities;
 - replacing the current requirement to provide a business description of the issuer with a requirement to classify the issuer by industry from a pre-established list of industries;
 - requiring revenue range information for the issuer, or net asset value range information in the case of hedge funds (subject to an option to decline to disclose);
 - requiring more specific information on the registration exemption claimed by the issuer in the Form D notice as well information on any exclusion claimed from the definition of "investment company" under the Investment Company Act of 1940 ("Investment Company Act");

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(Please see next page for more information.)

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Resourceful Representation SM

- requiring reporting of the date of first sale in the offering;
- specifying when amendments to a previously filed Form D notice are required, including to correct a material mistake or error in a previously filed Form D, to reflect certain material changes in the information contained therein and at least every 12 months while the offering is ongoing;
- requiring reporting of whether the offering is expected to last over a year;
- limiting reporting of the minimum investment amount accepted in the offering to the amount accepted from outside investors, so as not to affect employee stock ownership incentive plans adversely;
- requiring Central Registration Depository ("CRD") numbers for both individual recipients of sales compensation and associated broker-dealers;
- replacing the current requirement to disclose information on a wide variety of expenses and applications of proceeds with a requirement to report expenses only as to amounts paid for sales commissions and, separately stated, finders' fees, and report use of proceeds only as to the amount of proceeds used to make payments to executive officers, directors and promoters;
- replacing the current federal and state signature requirements with a combined signature requirement that includes an undertaking to provide offering documents to regulators on request (subject to applicable law), a consent to service of process and a certification that the issuer is not disqualified by rule from relying on an exemption claimed; and
- permitting a limited amount of free writing in "clarification" fields to the extent necessary to clarify certain information provided.

In order to file Form D electronically issuers will need the same codes as are required to file on the SEC's electronic filing system, EDGAR, today. An issuer that does not already have EDGAR filing codes, and to which the SEC has not previously assigned a user identification number, which is called a "Central Index Key (CIK)" code, will obtain the codes by filing electronically a Form ID at <https://www.filermanagement.edgarfiling.sec.gov> and filing, in paper by fax within two business days before or after filing the Form ID, a notarized authenticating document. The authenticating document must be manually signed by the applicant over the applicant's typed signature, include the information contained in the Form ID, confirm the authenticity of the Form ID and, if filed after electronically filing the Form ID, include the accession number assigned to the electronically filed Form ID as a result of its filing.

We are available to provide counsel and guidance concerning these issues, as well as other Securities Law concerns not discussed in this Legal Alert. For additional information on the issues discussed here and other issues arising under federal law, please contact us.

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