

## **RULE 504 OF REGULATION D**

[from <http://www.sec.gov/answers/rule504.htm>]

Rule 504 of Regulation D provides an exemption from the registration requirements of the federal securities laws for some companies when they offer and sell up to \$1,000,000 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 sell securities that are not restricted, if one of the following circumstances is met:

- \* 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;

- \* 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

- \* 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."

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 antifraud 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.

While companies using the Rule 504 exemption do not have to register their securities and usually do not have to file reports with the SEC, they must file what is known as a "Form D" after they first sell their securities. Form D is a brief notice that includes the names and addresses of the company's owners and stock promoters, but contains little other information about the company.

In February 2008, the SEC adopted amendments to Form D, requiring that electronic filing of Form D be phased in during the period September 15, 2008 to March 16, 2009. Although as amended, the electronic Form D requires much of the same information as the paper Form D, the amended Form D requires disclosure of the date of first sale in the offering.

Previously, the first date of sale was not required. The Office of Small Business Policy has posted information on its web page about the filing requirements for the new Form D.

## TENNESSEE SECURITIES ACT PROVISIONS

### Section 48-2-103 Exemptions

\* \* \*

(9) *Any transaction involving the issuance of a security:*

(A) In connection with a stock bonus plan requiring payment of no consideration other than services;

(B) In connection with a stock bonus, pension, profit sharing, savings, thrift, or retirement plan for employees or self-employed individuals qualified under § 401 of the Internal Revenue Code of 1954, as amended, or individual retirement accounts qualified under § 408 of the Internal Revenue Code of 1954, as amended; or

(C) *In connection with a transaction that meets the following requirements:*

(i) The offering meets the requirements of Rule 701 of the Securities Act of 1933 (17 C.F.R. § 230.701), as amended;

(ii) *The offering is exempt from the provisions of § 5 of the Securities Act of 1933, as amended;*

(iii) *The issuer files with the commissioner no later than fifteen (15) days after the first sale in this state a notice of transaction, on a form adopted by the commissioner, accompanied by a consent to service of process, and a nonrefundable filing fee of five hundred dollars (\$500); and*

(iv) *No commission, discount, or other remuneration is paid or given in connection with any transaction in this state under this subsection (b) unless paid or given to a broker-dealer or agent registered under this part;*

\* \* \*

(14) *Any offer or sale of a security by an issuer in a transaction that meets the following requirements:*

(A) *Sales of securities are made only to persons who are, or who the issuer reasonably believes are, accredited investors. An issuer's belief under this subdivision (b)(14) shall be deemed reasonable if the issuer:*

*(i) Obtains from such a person a written certification certifying that the person has reviewed the definition of “accredited investor” in § 48-2-102(1), and certifying that such person meets the definition of “accredited investor” in § 48-2-102(1);*

*(ii) Obtains from such person such other information as the commissioner may by rule require; and*

*(iii) Maintains, for a period of not less than three (3) years from the date of sale, the written certification and other information required by the commissioner;*

*(B) The issuer reasonably believes that all purchasers are purchasing for investment and not with a view to or for resale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within twelve (12) months of sale shall be presumed to be with a view to distribution and not for investment, except a resale to which any of the following applies:*

*(i) The resale is pursuant to a registration statement effective under § 48-2-105 or § 48-2-106;*

*(ii) The resale is to an accredited investor; or*

*(iii) The resale is to an institutional investor in an exempt transaction pursuant to subdivision (b)(3);*

(C) The exemption under this subdivision (b)(14) is not available to an issuer that is in the development stage and that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entities or persons....