

ALERTS

Corporate And Securities Law Alert - NASAA Launches Streamlined Electronic Multi-State Private Offering Filing System

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Startups and other private companies offering securities to investors in multiple states may be able to lower costs and reduce paperwork required to notify state securities regulators.

On Dec. 15, 2014, the North American Securities Administrators Association (NASAA) launched a new multi-state filing system enabling private issuers to submit Form D for Regulation D, Rule 506 offerings and pay related fees to participating state securities regulators online in a streamlined manner.

The new system, called the Electronic Filing Depository (EFD) may be able to save private issuers time and money by streamlining the state notification and fee payment process for private placements of securities by reducing attorney/paralegal time and mailing fees spent to research state notification requirements, draft letters and file notifications with various states' securities regulators.

The EFD is accessible to the public. According to NASAA at the time of this legal alert, all states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands have adopted and are capable of accepting filings using EFD except for Arizona, California, Connecticut, Delaware, Florida, Louisiana, Massachusetts, Michigan, Minnesota, New York, North Carolina and Oregon. While the EFD is currently limited to Form D filings for Rule 506 offerings, NASAA expects that the system will be expanded to accept other state securities registration and notice filing materials in the near future.

In addition to the filing fees required by the states, there is a one-time \$150 system use fee for each offering making its filings through the EFD. This one-time system fee covers initial, amendment and renewal filings made through the EFD.

Federal securities laws generally prohibit state securities regulators from requiring registration of private offers and sales of securities which are exempted from registration requirements at the federal level, however most states require that private issuers notify state regulators of an offering by filing a Form D, the federally-required SEC filing to notify the SEC of use of the Rule 506 exemption, within 15 days after the first sale of securities in that state. Before the EFD, these notifications had to be made in hard copy, often with a cover letter and/or a consent to service of process with nuanced requirements, as well as payment of a filing fee

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with separate checks and overnight mail for each notified state.

Because the EFD currently does not permit an issuer to upload its own documents or provide information other than through a Form D, any information or documents not contained in the Form D must be submitted separately.

The EFD also allows the public to search and view, free of charge, Form D filings made with state securities regulators through the EFD.

To obtain more information regarding this alert, contact the Barnes & Thornburg attorney with whom you work, or Curt Hidde at (317) 231-7707 or Curt.Hidde@btlaw.com; or Naomi Kwang at (317) 231-7545 or Naomi.Kwang@btlaw.com.

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