

# Small Business and the SEC

Following are questions and answers prepared by the U.S. Securities and Exchange Commission. Please review their website for updates

## Table of Contents

- I. What Are the Federal Securities Laws?
- II. How Can I Get Answers to My Questions?
- III. Should My Company "Go Public"?
- IV. How Does My Small Business Register a Public Offering?
- V. If My Company Becomes Public, What Disclosures Must I Regularly Make?
- VI. Are there legal ways to offer and Sell Securities Without Registering With the SEC?
  - A. Intrastate Offering Exemption
  - B. Private Offering Exemption
  - C. Regulation A
  - D. Regulation D
  - E. Accredited Investor Exemption - Section 4(6)
  - F. California Limited Offering Exemption - Rule 1001
  - G. Exemption for sales of securities through employee benefit plans - Rule 701
- VII. Are There State Law Requirements in Addition to Federal Ones?
- VIII. What Resources Are Available Through the U.S. Small Business Administration?
- IX. Where Can I Go for More Information?

## **I. What Are the Federal Securities Laws?**

In the chaotic securities markets of the 1920s, companies often sold stocks and bonds on the basis of glittering promises of fantastic profits - without disclosing any meaningful information to investors. These conditions contributed to the disastrous Stock Market Crash of 1929. In response, the U.S. Congress enacted the federal securities laws and created the Securities and Exchange Commission (SEC) to administer them.

There are two primary sets of federal laws that come into play when a company wants to offer and sell its securities to the public. They are:

- the Securities Act of 1933 (Securities Act), and
- the Securities Exchange Act of 1934 (Exchange Act).

### **Securities Act**

The Securities Act generally requires companies to give investors "full disclosure" of all "material facts," the facts investors would find important in making an investment decision. This Act also requires companies to file a registration statement with the SEC that includes information for investors. The SEC does not evaluate the merits of offerings, or determine if the securities offered are "good" investments. The SEC staff reviews registration statements and declares them "effective" if companies satisfy our disclosure rules.

### **Exchange Act**

The Exchange Act requires publicly held companies to disclose information continually about their business operations, financial conditions, and managements. These companies, and in many cases their officers, directors and significant shareholders, must file periodic reports or other disclosure documents with the SEC. In some cases, the company must deliver the information directly to investors.

### **Exemptions**

Your company may be exempt from these registration and reporting requirements.

## **II. How Can I Get Answers to My Questions?**

The SEC tries to meet the needs of small business through its rules and regulations. It also offers informal guidance by answering your questions over the phone, through the mail or by e-mail. The SEC offers you a number of ways to express your views and get help from the staff. Of course, you should always retain competent counsel before engaging in any securities offering.

### **Special Ombudsman to Serve You**

In 1996, we appointed a Special Ombudsman for Small Business to serve you and to represent the concerns of smaller companies within the SEC. You can tell the Ombudsman your concerns about any SEC proposal or rule. The Ombudsman also can answer your general questions or help you find the answers to your specific questions.

### **The Office of Small Business**

The Division of Corporation Finance's Office of Small Business directs the SEC's small business rulemaking initiatives and comments on SEC rule proposals affecting small companies. Its staff works with Congressional committees, government agencies, and other groups concerned with small business. The Office also specializes in the review of filings from small companies.

### **Town Hall Meetings**

The Office of Small Business also sponsors small business town hall meetings across the country. These meetings help the SEC convey basic information to small businesses and learn more about the problems small businesses face in raising capital. These meetings help the SEC design programs that meet small businesses' needs while protecting investors.

### **Government – Business Forum on Small Business Capital Formation**

In addition to the town hall meetings, the SEC sponsors the Government – Business Forum on Small Business Capital Formation. This annual meeting provides the only national forum for small businesses to let government officials from different parts of the federal government know how the laws, rules and regulations impact the ability of small companies to raise capital.

### **III. Should My Company “Go Public”?**

When your company needs additional capital, "going public" may be the right choice, but you should weigh your options carefully. If your company is in the very early stages of development, it may be better to seek loans from financial institutions or the Small Business Administration. Other alternatives include raising money by selling securities in transactions that are exempt from the registration process. We discuss these alternatives later.

There are benefits and new obligations that come from raising capital through a public offering registered with the SEC. While the benefits are attractive, be sure you are ready to assume these new obligations:

#### **Benefits**

- Your access to capital will increase, since you can contact more potential investors.
- Your company may become more widely known.
- You may obtain financing more easily in the future if investor interest in your company grows enough to sustain a secondary trading market in your securities.
- Controlling shareholders, such as the company's officers or directors, may have a ready market for their shares, which means that they can more easily sell their interests at retirement, for diversification, or for some other reason.
- Your company may be able to attract and retain more highly qualified personnel if it can offer stock options, bonuses, or other incentives with a known market value.
- The image of your company may be improved.

#### **New Obligations**

- You must continue to keep shareholders informed about the company's business operations, financial condition, and management, incurring additional costs and new legal obligations.
- You may be liable if you do not fulfill these new legal obligations.

- You may lose some flexibility in managing your company's affairs, particularly when shareholders must approve your actions.
- Your public offering will take time and money to accomplish.

#### **IV. How Does My Small Business Register a Public Offering?**

If you decide on a registered public offering, the Securities Act requires your company to file a registration statement with the SEC before the company can offer its securities for sale. You cannot actually sell the securities covered by the registration statement until the SEC staff declares it "effective," even though registration statements become public immediately upon filing.

Registration statements have two principal parts:

- Part I is the prospectus, the legal offering or "selling" document. Your company - the "issuer" of the securities - must describe in the prospectus the important facts about its business operations, financial condition, and management. Everyone who buys the new issue, as well as anyone who is made an offer to purchase the securities, must have access to the prospectus.
- Part II contains additional information that the company does not have to deliver to investors. Anyone can see this information by requesting it from one of the SEC's public reference rooms or by looking it up on the SEC Web site.

#### **The Basic Registration Form - Form S-1**

All companies can use Form S-1 to register their securities offerings. You should not prepare a registration statement as a fill-in-the-blank form, like a tax return. It should be similar to a brochure, providing readable information. If you file this form, your company must describe each of the following in the prospectus:

- its business;
- its properties;
- its competition;
- the identity of its officers and directors and their compensation;
- material transactions between the company and its officers and directors;

- material legal proceedings involving the company or its officers and directors;
- the plan for distributing the securities; and the intended use of the proceeds of the offering.

Information about how to describe these items is set out in SEC rules. Registration statements also must include financial statements audited by an independent certified public accountant.

In addition to the information expressly required by the form, your company must also provide any other information that is necessary to make your disclosure complete and not misleading. You also must clearly describe any risks prominently in the prospectus, usually at the beginning. Examples of these risk factors are:

- lack of business operating history;
- adverse economic conditions in a particular industry;
- lack of a market for the securities offered; and
- dependence upon key personnel.

### **Alternative Registration Forms for Small Business Issuers**

If your company qualifies as a "small business issuer," it can choose to file its registration statement using one of the simplified small business forms. A small business issuer is a United States or Canadian issuer:

that had less than \$25 million in revenues in its last fiscal year, and whose outstanding publicly-held stock is worth no more than \$25 million.

#### **Form SB-1 - To Raise \$10 Million or Less**

Small business issuers offering up to \$10 million worth of securities in any 12-month period may use Form SB1. This form allows you to provide information in a question and answer format, similar to that used in Regulation A offerings, a type of exempt offering discussed on page 19. Unlike Regulation A filings, Form SB-1 requires audited financial statements.

#### **Form SB-2 - To Raise Capital in Any Amount**

If your company is a "small business issuer," it may register an unlimited dollar amount of securities using Form SB-2, and may use this form again and again so long as it satisfies the "small business issuer" definition.

One advantage of Form SB-2 is that all its disclosure requirements are in Regulation S-B, a set of rules written in simple, non-legalistic terminology. Form SB-2 also permits the company to:

- Provide audited financial statements, prepared according to generally accepted accounting principles, for two fiscal years. In contrast, Form S-1 requires the issuer to provide audited financial statements, prepared according to more detailed SEC regulations, for three fiscal years; and
- Include less extensive narrative disclosure than Form S-1 requires, particularly in the description of your business, and executive compensation.

### **Staff Review of Registration Statements**

SEC staff examines registration statements for compliance with disclosure requirements. If a filing appears incomplete or inaccurate, the staff usually informs the company by letter. The company may file correcting or clarifying amendments. Once the company has satisfied the disclosure requirements, the staff declares the registration statement effective. The company may then begin to sell its securities. The SEC can refuse or suspend the effectiveness of any registration statement if it concludes that the document is misleading, inaccurate, or incomplete.

### **V. If My Company Becomes Public, What Disclosures Must I Regularly Make?**

Your company can become "public" in one of two ways - by issuing securities in an offering registered under the Securities Act or by registering the company's outstanding securities under Exchange Act requirements. Both types of registration trigger ongoing reporting obligations for your company. In some cases, the Exchange Act also subjects your company's officers, directors and significant shareholders to reporting requirements. Let's discuss these requirements individually.

### **Reporting obligations because of Securities Act registration**

Once the staff declares your company's Securities Act registration statement effective, the Exchange Act requires you to file reports with the SEC. The obligation to file reports continues at least through the end of the fiscal year in which your registration statement becomes effective. After that, you are required to continue reporting unless you satisfy the following "thresholds," in which case your filing obligations are suspended:

- your company has fewer than 300 shareholders of the class of securities offered; or
- your company has fewer than 500 shareholders of the class of securities offered and less than \$10 million in total assets for each of its last three fiscal years.

If your company is subject to the reporting requirements, it must file information with the SEC about:

- its operations;
- its officers, directors, and certain shareholders, including salary, various fringe benefits, and transactions between the company and management;
- the financial condition of the business, including financial statements audited by an independent certified public accountant; and
- its competitive position and material terms of contracts or lease agreements.

All of this information becomes publicly available when you file your reports with the SEC. As is true with Securities Act filings, small business issuers may choose to use small business alternative forms and Regulation S-B for registration and reporting under the Exchange Act.

Obligations because of Exchange Act registration

Even if your company has not registered a securities offering, it must file an Exchange Act registration statement if:

- it has more than \$10 million total assets and a class of equity securities, like common stock, with 500 or more shareholders; or
- it lists its securities on an exchange or on Nasdaq.

If a class of your company's securities is registered under the Exchange Act, the company, as well as its shareholders and management, are subject to various reporting requirements, explained below.

## **Ongoing Exchange Act periodic reporting**

If your company registers a class of securities under the Exchange Act, it must file the same annual, periodic, and current reports that are required as a result of Securities Act registration, as explained above. This obligation continues for as long as the company exceeds the reporting thresholds previously outlined on page 11. If your company's securities are traded on an exchange or on Nasdaq, the company must continue filing these reports as long as the securities trade on those markets, even if your company falls below the thresholds.

## **Proxy rules**

A company with Exchange Act registered securities must comply with the SEC's proxy rules whenever it seeks a shareholder vote on corporate matters. These rules require the company to provide a proxy statement to its shareholders, together with a proxy card when soliciting proxies. Proxy statements discuss management and executive compensation, along with descriptions of the matters up for a vote. If the company is not soliciting proxies but will take a vote on a matter, the company must provide to its shareholders an information statement that is similar to a proxy statement. The proxy rules also require your company to send an annual report to shareholders if there will be an election of directors. These reports contain much of the same information found in the Exchange Act annual reports that a company must file with the SEC, including audited financial statements. The proxy rules also govern when your company must provide shareholder lists to investors and when it must include a shareholder proposal in the proxy statement.

## **Beneficial ownership reports**

If your company has registered a class of its equity securities under the Exchange Act, persons who acquire more than five percent of the outstanding shares of that class must file beneficial owner reports until their holdings drop below five percent. These filings contain background information about the beneficial owners as well as their investment intentions, providing investors and the company with information about accumulations of securities that may potentially change or influence company management and policies.

## **Tender offers**

A public company with Exchange Act registered securities that faces a takeover attempt, or third party tender offer, should be aware that the SEC's tender offer rules will apply to the transaction. The same is true if the company makes a

tender offer for its own Exchange Act registered securities. The filings required by these rules provide information to the public about the person making the tender offer. The company that is the subject of the takeover must file with the SEC its responses to the tender offer. The rules also set time limits for the tender offer and provide other protections to shareholders.

### **Transaction reporting by officers, directors and ten percent shareholders**

Section 16 of the Exchange Act applies to your company's directors and officers, as well as shareholders who own more than 10% of a class of your company's equity securities registered under the Exchange Act. It requires these persons to report their transactions involving the company's equity securities to the SEC. Section 16 also establishes mechanisms for a company to recover "short swing" profits, those profits an insider realizes from a purchase and sale of a company security within a six-month period. In addition, Section 16 prohibits short selling by these persons of any class of the company's securities, whether or not that class is registered under the Exchange Act.

## **VI. Are There Legal Ways To Offer and Sell Securities Without Registering With the SEC?**

Yes! Your company's securities offering may qualify for one of several exemptions from the registration requirements. We explain the most common ones below. You must remember, however, that all securities transactions, even exempt transactions, are subject to the antifraud provisions of the federal securities laws. This means that you and your company will be responsible for false or misleading statements, whether oral or written. The government enforces the federal securities laws through criminal, civil and administrative proceedings. Some enforcement proceedings are brought through private law suits. Also, if all conditions of the exemptions are not met, purchasers may be able to obtain refunds of their purchase price. In addition, offerings that are exempt from provisions of the federal securities laws may still be subject to the notice and filing obligations of various state laws. Make sure you check with the appropriate state securities administrator before proceeding with your offering.

### **A. Intrastate Offering Exemption**

Section 3(a)(11) of the Securities Act is generally known as the "intrastate offering exemption." This exemption facilitates the financing of local business operations. To qualify for the intrastate offering exemption, your company must:

be incorporated in the state where it is offering the securities;  
carry out a significant amount of its business in that state; and

make offers and sales only to residents of that state.

There is no fixed limit on the size of the offering or the number of purchasers. Your company must determine the residence of each purchaser. If any of the securities are offered or sold to even one out-of-state person, the exemption may be lost. Without the exemption, the company could be in violation of the Securities Act registration requirements. If a purchaser resells any of the securities to a person who resides outside the state within a short period of time after the company's offering is complete (the usual test is nine months), the entire transaction, including the original sales, might violate the Securities Act. Since secondary markets for these securities rarely develop, companies often must sell securities in these offerings at a discount.

It will be difficult for your company to rely on the intrastate exemption unless you know the purchasers and the sale is directly negotiated with them. If your company holds some of its assets outside the state, or derives a substantial portion of its revenues outside the state where it proposes to offer its securities, it will probably have a difficult time qualifying for the exemption.

You may follow Rule 147, a "safe harbor" rule, to ensure that you meet the requirements for this exemption. It is possible, however, that transactions not meeting all requirements of Rule 147 may still qualify for the exemption.

## **B. Private Offering Exemption**

Section 4(2) of the Securities Act exempts from registration "transactions by an issuer not involving any public offering." To qualify for this exemption, the purchasers of the securities must:

have enough knowledge and experience in finance and business matters to evaluate the risks and merits of the investment (the "sophisticated investor"), or be able to bear the investment's economic risk;

have access to the type of information normally provided in a prospectus; and agree not to resell or distribute the securities to the public.

In addition, you may not use any form of public solicitation or general advertising in connection with the offering.

The precise limits of this private offering exemption are uncertain. As the number of purchasers increases and their relationship to the company and its management becomes more remote, it is more difficult to show that the transaction qualifies for the exemption. You should know that if you offer securities to even one person who does not meet the necessary conditions, the entire offering may be in violation of the Securities Act.

Rule 506, another "safe harbor" rule, provides objective standards that you can rely on to meet the requirements of this exemption. Rule 506 is a part of Regulation D, which we describe more fully on page 24.

### **C. Regulation A**

Section 3(b) of the Securities Act authorizes the SEC to exempt from registration small securities offerings. By this authority, we created Regulation A, an exemption for public offerings not exceeding \$5 million in any 12-month period. If you choose to rely on this exemption, your company must file an offering statement, consisting of a notification, offering circular, and exhibits, with the SEC for review.

Regulation A offerings share many characteristics with registered offerings. For example, you must provide purchasers with an offering circular that is similar in content to a prospectus. Like registered offerings, the securities can be offered publicly and are not "restricted," meaning they are freely tradeable in the secondary market after the offering. The principal advantages of Regulation A offerings, as opposed to full registration, are:

- The financial statements are simpler and don't need to be audited;
- There are no Exchange Act reporting obligations after the offering unless the company has more than \$10 million in total assets and more than 500 shareholders;
- Companies may choose among three formats to prepare the offering circular, one of which is a simplified question-and-answer document; and
- You may "test the waters" to determine if there is adequate interest in your securities before going through the expense of filing with the SEC.

All types of companies which do not report under the Exchange Act may use Regulation A, except "blank check" companies, those with an unspecified business, and investment companies registered or required to be registered under the Investment Company Act of 1940. In most cases, shareholders may use Regulation A to resell up to \$1.5 million of securities.

If you "test the waters," you can use general solicitation and advertising prior to filing an offering statement with the SEC, giving you the advantage of determining whether there is enough market interest in your securities before you incur the full range of legal, accounting, and other costs associated with filing an offering statement. You may not, however, solicit or accept money until the SEC staff completes its review of the filed offering statement and you deliver prescribed offering materials to investors.

## **D. Regulation D**

Regulation D establishes three exemptions from Securities Act registration. Let's address each one separately.

### **Rule 504**

Rule 504 provides an exemption for the offer and sale of up to \$1,000,000 of securities in a 12-month period. Your company may use this exemption so long as it is not a blank check company and is not subject to Exchange Act reporting requirements. Like the other Regulation D exemptions, in general you may not use public solicitation or advertising to market the securities and purchasers receive "restricted" securities, meaning that they may not sell the securities without registration or an applicable exemption. However, you can use this exemption for a public offering of your securities and investors will receive freely tradable securities under the following circumstances:

- You register the offering exclusively in one or more states that require a publicly filed registration statement and delivery of a substantive disclosure document to investors;
- You register and sell in a state that requires registration and disclosure delivery and also sell in a state without those requirements, so long as you deliver the disclosure documents mandated by the state in which you registered to all purchasers; or,
- You sell exclusively according to state law exemptions that permit general solicitation and advertising, so long as you sell only to "accredited investors," a term we describe in more detail below in connection with Rule 505 and Rule 506 offerings.

Even if you make a private sale where there are no specific disclosure delivery requirements, you should take care to provide sufficient information to investors to avoid violating the antifraud provisions of the securities laws. This means that any information you provide to investors must be free from false or misleading statements. Similarly, you should not exclude any information if the omission makes what you do provide investors false or misleading.

### **Rule 505**

Rule 505 provides an exemption for offers and sales of securities totaling up to \$5 million in any 12-month period. Under this exemption, you may sell to an

unlimited number of "accredited investors" and up to 35 other persons who do not need to satisfy the sophistication or wealth standards associated with other exemptions. Purchasers must buy for investment only, and not for resale. The issued securities are "restricted." Consequently, you must inform investors that they may not sell for at least a year without registering the transaction. You may not use general solicitation or advertising to sell the securities.

An "accredited investor" is:

- a bank, insurance company, registered investment company, business development company, or small business investment company;
- an employee benefit plan, within the meaning of the Employee Retirement Income Security Act, if a bank, insurance company, or registered investment adviser makes the investment decisions, or if the plan has total assets in excess of \$5 million;
- a charitable organization, corporation or partnership with assets exceeding \$5 million;
- a director, executive officer, or general partner of the company selling the securities;
- a business in which all the equity owners are accredited investors;
- a natural person with a net worth of at least \$1 million;
- a natural person with income exceeding \$200,000 in each of the two most recent years or joint income with a spouse exceeding \$300,000 for those years and a reasonable expectation of the same income level in the current year; or
- a trust with assets of at least \$5 million, not formed to acquire the securities offered, and whose purchases are directed by a sophisticated person.

It is up to you to decide what information you give to accredited investors, so long as it does not violate the antifraud prohibitions. But you must give non-accredited investors disclosure documents that generally are the same as those used in registered offerings. If you provide information to accredited investors, you must make this information available to the non-accredited investors as well. You must also be available to answer questions by prospective purchasers.

Here are some specifics about the financial statement requirements applicable to this type of offering:

- Financial statements need to be certified by an independent public accountant;
- If a company other than a limited partnership cannot obtain audited financial statements without unreasonable effort or expense, only the company's balance sheet, to be dated within 120 days of the start of the offering, must be audited; and
- Limited partnerships unable to obtain required financial statements without unreasonable effort or expense may furnish audited financial statements prepared under the federal income tax laws.

## **Rule 506**

As we discussed earlier, Rule 506 is a "safe harbor" for the private offering exemption. If your company satisfies the following standards, you can be assured that you are within the Section 4(2) exemption:

- You can raise an unlimited amount of capital;
- You cannot use general solicitation or advertising to market the securities;
- You can sell securities to an unlimited number of accredited investors (the same group we identified in the Rule 505 discussion) and up to 35 other purchasers. Unlike Rule 505, all non-accredited investors, either alone or with a purchaser representative, must be sophisticated - that is, they must have sufficient knowledge and experience in financial and business matters to make them capable of evaluating the merits and risks of the prospective investment;
- It is up to you to decide what information you give to accredited investors, so long as it does not violate the antifraud prohibitions. But you must give non-accredited investors disclosure documents that generally are the same as those used in registered offerings. If you provide information to accredited investors, you must make this information available to the non-accredited investors as well;
- You must be available to answer questions by prospective purchasers;
- Financial statement requirements are the same as for Rule 505; and
- Purchasers receive "restricted" securities. Consequently, purchasers may not freely trade the securities in the secondary market after the offering.

### **E. Accredited Investor Exemption - Section 4(6)**

Section 4(6) of the Securities Act exempts from registration offers and sales of securities to accredited investors when the total offering price is less than \$5 million.

The definition of accredited investors is the same as that used in Regulation D. Like the exemptions in Rule 505 and 506, this exemption does not permit any form of advertising or public solicitation. There are no document delivery requirements. Of course, all transactions are subject to the antifraud provisions of the securities laws.

### **F. California Limited Offering Exemption - Rule 1001**

SEC Rule 1001 provides an exemption from the registration requirements of the Securities Act for offers and sales of securities, in amounts of up to \$5 million, that satisfy the conditions of §25102(n) of the California Corporations Code. This California law exempts from California state law registration offerings made by California companies to "qualified purchasers" whose characteristics are similar to, but not the same as, accredited investors under Regulation D. This exemption allows some methods of general solicitation prior to sales.

### **G. Exemption for Sales of Securities through Employee Benefit Plans – Rule 701**

The SEC's Rule 701 exempts sales of securities if made to compensate employees. This exemption is available only to companies that are not subject to Exchange Act reporting requirements. You can sell at least \$1,000,000 of securities under this exemption, no matter how small your company is. You can sell even more if you satisfy certain formulas based on your company's assets or on the number of its outstanding securities. If you sell more than \$5 million in securities in a 12-month period, you need to provide limited disclosure documents to your employees. Employees receive "restricted securities" in these transactions and may not freely offer or sell them to the public.

## **VII. Are There State Law Requirements in Addition to Federal Ones?**

The federal government and state governments each have their own securities laws and regulations. If your company is selling securities, it must comply with federal and state securities laws. If a particular offering is exempt under the federal securities laws, that does not necessarily mean that it is exempt from any of the state laws.

Historically, most state legislatures have followed one of two approaches in regulating public offerings of securities, or a combination of the two approaches. Some states review small businesses' securities offerings to ensure that companies disclose to investors all information needed to make an informed investment decision. Other states also analyze public offerings using substantive standards to assure that the terms and structure of the offerings are fair to investors, in addition to the focus on disclosure.

To facilitate small business capital formation, the North American Securities Administrators Association, or NASAA, in conjunction with the American Bar Association, developed the Small Company Offering Registration, also known as SCOR. SCOR is a simplified "question and answer" registration form that companies also can use as the disclosure document for investors. SCOR was primarily designed for state registration of small business securities offerings conducted under the SEC's Rule 504, for sale of securities up to \$1,000,000, discussed on page 20. Currently, over 45 states recognize SCOR.

In addition, a small company can use the SCOR Form, called Form U-7, to satisfy many of the filing requirements of the SEC's Regulation A exemption, for sales of securities of up to \$5,000,000, since the company may file it with the SEC as part of the Regulation A offering statement.

To assist small businesses offering in several states, many states coordinate SCOR or Regulation A filings through a program called regional review. Regional reviews are available in the New England, Mid-Atlantic, Midwest and Western regions.

Companies seeking additional information on SCOR, regional reviews or the "Issuer's Manual" should contact NASAA.

## **VIII. What Resources Are Available Through the U.S. Small Business Administration?**

When assessing your capital needs, you should consider programs offered through the U.S. Small Business Administration (SBA). Congress established the SBA in 1953 to aid, counsel, and protect the interests of the Nation's small business community. The SBA accomplishes this in part by working with intermediaries, banks, and other lending institutions to provide loans and venture capital financing to small businesses unable to secure financing through normal lending channels. The SBA offers financing through the programs listed below.

### **7(a) Loan Guaranty Program:**

This is the SBA's primary lending program and was designed to meet the majority of the small business lending community's financing needs. In addition to general financing, the 7(a) program also encompasses a number of specialized loan programs. The following are a few of the many specialized loan programs:

### **Low Doc**

This program is designed to increase the availability of funds under \$100,000 and streamline or expedite the loan review process.

### **CAPLines**

An umbrella program to help small businesses meet their short-term and cyclical working-capital needs with five separate programs.

### **International Trade**

If your business is preparing to engage in or is already engaged in international trade, or is adversely affected by competition from imports, the International Trade Loan Program is for you; and

### **DELTA**

Defense Loan and Technical Assistance is a joint SBA and Department of Defense effort to provide financial and technical assistance to defense-dependent small firms adversely affected by cutbacks in defense.

### **Microloan Program**

This program works through intermediaries to provide small loans from as little as \$100 up to \$25,000.

### **Certified Development Company (504 Loan) Program**

This program, commonly referred to as the 504 program, makes long term loans available for purchasing land, buildings, machinery and equipment, and for building, modernizing or renovating existing facilities and sites.

### **Small Business Investment Company Program**

Small Business Investment Companies (SBICs), which the SBA licenses and regulates, are privately-owned and managed investment firms that provide venture capital and start-up financing to small businesses.

### **Additional Financial Resources and Information from the SBA's Office of Advocacy**

#### **Angel Capital Electronic Network (ACE-Net)**

The Office of Advocacy of SBA has established an Internet site where small companies may list their Regulation A and Regulation D 504/SCOR stock offerings. ACE-Net is a cooperative effort between SBA and nine universities, state-based entities, and other non-profit organizations to provide a listing service where small companies may list their stock offering for review by high net worth investors (accredited investors). In addition, ACE-Net anticipates providing mentoring and educational services for small companies needing business planning and securities information.

#### **Small Business Lending in the United States**

The Office of Advocacy of SBA has ranked the nearly 10,000 banks in the country on a state-by-state basis to determine which banks are "small business friendly." The state-by-state directory helps small businesses locate which banks in their area are more likely to lend to small business.

### **IX. Where Can I Go for More Information?**

The staff of the SEC's Office of Small Business and the SEC's Small Business Ombudsman will be glad to assist you with any questions you may have regarding federal securities laws. For information about state securities laws, contact NASAA or your state's securities administrator, whose office is usually located in your capital city.

The entire text of the SEC's rules and regulations is available through the U.S. Government Printing Office or from several private publishers of legal information. In addition, numerous books on this subject have been published, and some are available at public libraries. As of this writing, the following volumes of Title 17 of the Code of Federal Regulations (the SEC's rules and regulations) were available from the Government Printing Office:

- Vol. II - Parts 200 to 239. SEC Organization; Conduct and Ethics; Information and Requests; Rules of Practice; Regulation S-X and Securities Act of 1933.
- Vol. III - Parts 240 to End. Securities Exchange Act of 1934; Public Utility Holding Company, Trust Indenture, Investment Company, Investment Advisers, and Securities Investor Protection Corporation Acts.

## MICHAEL T. CHULAK & ASSOCIATES

---

### A LAW CORPORATION

#### Corporate Office

30343 Canwood Street, Suite 203 (818) 991-9019  
Agoura Hills, CA 91301 (800) 565-2232

#### Regional Office

1055 E. Colorado Blvd., 5<sup>th</sup> Floor (626) 227-7100  
Pasadena, CA 91106 (888) 989-3330

#### Satellite Offices

Santa Clarita Valley By Appointment  
Ontario  
Orange County  
Los Angeles  
Santa Barbara