

UT Law CLE 2015 Securities Regulation Primer:
The Nuts and Bolts of a Private Private Placement

**What You Owe Investors:
Disclosure of Information**

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Agenda

- I. Steps in the PPM Preparation Process
- II. Required Disclosure Driven by Exemption
- III. Why prepare a disclosure document?
- IV. The Disclosure Document
- V. Due Diligence
- VI. What to Disclose
 - What is Material?
 - Rule 502(b) Disclosure Requirements
- VII. Preparing the PPM

I. Steps in the PPM Preparation Process

Steps

- 1) Provide the company a due diligence request list of documents to be assembled and made available for review and directors and officer's questionnaires to be completed and signed by directors and officers.
- 2) Perform due diligence review of the materials made available.
- 3) Determine the terms of the securities offering and the exemption being relied upon.
- 4) Based upon the exemption, determine the disclosure required, and create an outline.
- 5) Using the outline and information obtained during the course of due diligence prepare the PPM.
- 6) Provide drafts to the company and placement agent, if any, for review and coordinate drafting sessions.

II. Required Disclosure Driven by Exemption

There are many types of unregistered offerings of securities by issuers. The required disclosure and disclosure document involved in each type vary.

- Section 3(a)(11) and Rule 147 Intra-state Offering Exemption
- Section 3(b)
- Section 4(a)(2)
- Section 4(a)(5)
- Reg A Small Offering Exemption/Reg A+ (SEC Proposed Rules)
- Regulation D
 - Rule 504
 - Rule 505
 - **Rule 506(b)**
 - **Rule 506(c)**

III. Why Prepare a Disclosure Document?

- Some exemptions such as Rule 504, 506(b) offerings to accredited investors, 506(c), Section 4(a)(5) and Rule 147, do not specify the provision of a disclosure document.
- So why spend the time and money on preparing a disclosure document for prospective investors?
 - To mitigate risk and control liability
- How?
 - Overview of the Securities Act of 1933 Regulatory Framework
 - Complete and accurate disclosure can mitigate liability for material misstatements and omissions
 - Documented and demonstrated compliance with the exemption from registration relied upon.

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