

Trying to Keep Track: Form D and Blue Sky Laws

The Nuts and Bolts of a Private Placement
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“Blue Sky”

Before the federal '33 Act, '34 Act or any '40 Acts, securities offerings were governed primarily by state securities laws.

These laws became known colloquially as “Blue Sky Laws”.

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Patchwork of Regulation: Seeking Uniformity

Variations in state laws were widespread, prompting the adoption of the **Uniform Securities Act of 1956**:

- State jurisdiction over an offering if: “offer” or “sale” of a security within the state;
- Securities must either be registered or exempt; and
- Meant that an offering had to fit into an exemption at both the federal level and within each state, or have multiple registrations.

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Post Uniform Act: Still A Patchwork

Variations in state laws are still widespread:

- 21 of the 39 states that originally adopted the Uniform Securities Act of 1956 still rely on the 1956 Act;
- 17 states have adopted the revised Uniform Securities Act of 2002; and
- 10 states including **Texas**, California, Florida, Illinois, and New York rely on their own specific laws.

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National Securities Markets Improvement Act of 1996

- Preempts state authority over “covered securities”
 - Private placements under Section 4(2) of '33 Act (Rule 506 of Reg. D).
- If not a “covered security” then state law still applies
 - e.g. private placements:
 - Issued under Rules 505 and 504 of Reg D; or
 - Issued under 4(2) but not meeting requirements of 506.

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Blue Sky: Bottom Line and Silver Linings

Good News: After NSMIA states are permitted only to (i) require a notice filing, (ii) impose a filing fee, and (iii) require issuer to consent to service of process (Form U-2) in the state.

Even Better News: as of 12/14 there is an integrated filing system for most states (but not NY or CA)

Bad News? Note that NY AG takes the position that all offerings into or from state of NY require a Form 99 prior to offering.

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