



Blue Sky Considerations for Private Offerings

July 15, 2016

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Timeline

- May 27, 1933: Securities Act of 1933
- March 8, 1982: Adopt Regulation D
(including Rule 506)
- October 11, 1996: National Securities
Markets Improvements
Act (NSMIA)

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Timeline

- April 5, 2012: JOBS Act provisions relating to Rule 506
- July 10, 2013: Rule 506(c) added and other modifications
- August 6, 2015: New SEC Compliance and Disclosure Interpretations

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National Securities Markets Improvement Act of 1996 (NSMIA)

- NSMIA fundamentally changed the Blue Sky landscape
- Created the concept of a "covered security" (see Section 18 of Securities Act)

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NSMIA – Covered Security

- If a covered security, federal regulation preempts state law, severely limiting the power of state blue sky laws in certain situations
- A security offered/sold in compliance with Rule 506 is a “covered security”

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NSMIA – Covered Security

- Only federal registration requirements / exemptions apply and the most that a state can require is:
 - Notice filing informing of the federal registration or exemption
 - Notice filing fee
 - Consent to service of process
 - Must still abide by state anti-fraud laws

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First appeared as part of the conference materials for the
25th Annual LLCs, LPs and Partnerships session

"Blue Sky Considerations for Private Offerings"