

Oregon Department of Consumer and Business Services
Division of Finance and Corporate Securities
Securities Section

The Many Paths To Oregon Blue Sky Registration

September 18, 2013

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Presenters:

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Speaker Biographies

Jason Ambers, Registration Analyst. (503) 947-7059 jason.e.ambers@state.or.us Mr. Ambers has been with the Division since 2008. In addition to his registration-related duties, he also serves as a Financial Enforcement Officer. After graduating from Stanford University in 1994 and prior to attending New York University School of Law from 1999 to 2002, Mr. Ambers was an investment banking analyst for J.P. Morgan & Co., Inc. in New York and Pacific Crest Securities Inc. in Portland. Mr. Ambers developed an interest in securities regulation and enforcement after spending a summer with the Securities and Exchange Commission while in law school. He has also worked as a corporate associate for the law offices of Stroock & Stroock & Lavan LLP in New York and a judicial clerk for the Honorable Adrienne C. Nelson in Multnomah County.

Dave Weiss, Registration Analyst. (503) 947-7169 david.t.weiss@state.or.us Mr. Weiss has been with the Division since 1999. In addition to his registration-related duties, he also serves as a Financial Enforcement Officer. Prior to his admission to the Oregon State Bar in 1998, Mr. Weiss practiced in Michigan for seven years, with an emphasis on appellate law. Mr. Weiss interned for Shearson Lehman/ American Express while attending Boston University, and received his J.D. from Thomas M. Cooley Law School in Lansing, Michigan.

The Many Paths To Oregon Blue Sky Registration
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I. When is Registration Required

- A. It is unlawful to offer or sell securities in Oregon without meeting one of the following three conditions:
1. The securities are registered with the Division of Finance and Corporate Securities [see ORS 59.055 (1)]
 2. The securities are exempt under ORS 59.025, or the transaction is exempt under ORS 59.035 [see ORS 59.055 (2)]
 3. The securities are federally covered securities for which a notice filing has been made with the Division of Finance and Corporate Securities [see ORS 59.055 (3)]

II. Common Exempt Securities, Exempt Transactions

- A. Pursuant to ORS 59.275, the party asserting reliance on an exemption has the burden of proving the availability of the exemption.
1. Commonly used exemptions include:
 - Pro rata offering to existing shareholders [see ORS 59.035 (3)]
 - Sales to accredited investors [see ORS 59.035 (5)]
 - Sales to a limited number of Oregon residents [see ORS 59.035 (12)]

III. Federal Covered Securities

- A. Covered securities may be sold without registration in Oregon
1. “Covered securities” are defined in Section 18 (b) of the ’33 Act and ORS 59.015(5)
 2. Unless a covered security exempt under ORS 59.025 or ORS 59.035, notice filing required
 - Rule 506: Form D + \$250 filing fee
 - All other covered securities: letter describing securities + \$200 filing fee

IV. Preregistration “Testing the Waters”

- A. Prefiling: Solicitations of Interest (Regulation A and SCOR Offerings Only) (OAR 441-035-0045)
1. Allows certain offerors to solicit indications of interest using scripted radio or television broadcasts, written materials, and/or oral communications.
 2. Offerors may collect non-binding indications of interest.
 3. Solicitations must stop after the registration statement has been filed. No sales can be made until at least 20 days after the last communication was made in reliance on OAR 441-035-0045.
 4. See OAR 441-035-0045 for the specific filing, fee, and disclosure requirements.
- B. Waiting Period: “Red Herring” Exemption (ORS 59.035(11))
1. Allows for the offer, but not the sale of unregistered securities so long as either 1) a registration statement has been filed with the Division and with the SEC, or 2) a registration statement has been filed with the Division only and the Division allows the offer.

V. Types of Registration in Oregon

- A. Qualification (OAR 441-065-0020)
1. Default registration procedure
 2. Oregon is “merit review” jurisdiction
 3. Oregon has not adopted NASAA Guidelines by statute or rule
 4. Filing requirements include:
 - ✓ Form U-1
 - ✓ Registration statement/prospectus
 - ✓ Underwriting agreement/dealer’s agreement
 - ✓ Articles/bylaws
 - ✓ Contracts/documents of a material nature
 - ✓ Opinion of counsel
 - ✓ Experts’ opinions and reports
 - ✓ Security specimen

- ✓ Advertising materials
- ✓ Financial statements
- ✓ Issuer-salesperson application(s) [if no broker-dealer]
- ✓ Registration fee [see OAR 441-065-0001]

B. Filing (OAR 441-065-0030)

1. Registration without merit review if:

- ✓ Registration statement filed with SEC
- ✓ Minimum of 36 months of U.S. business operations
- ✓ Equities registered under Section 12 (b) or (g) of '34 Act
- ✓ Minimum of 500 shareholders of record
- ✓ Net worth \$4,000,000 or \$2,000,000 plus conditions
- ✓ Issuer has filed all required reports with SEC in timely fashion
- ✓ At least 4 market makers for equities registered
- ✓ See OAR 441-065-0030 (1) for additional conditions
- ✓ See OAR 441-065-0030 (2) for submission requirements

C. Multijurisdictional Coordination (OAR 441-065-0035)

1. Registration process available only to certain Canadian issuers

- ✓ Registration statement filed with SEC
- ✓ Use Forms F-7, F-8, F-9, or F-10
- ✓ Automatic Oregon registration if certain conditions satisfied
- ✓ See OAR 441-065-0035 (2) for submission requirements

D. Resale/Trading/Dealing (OAR 441-065-0040)

1. Registration process available only to licensed broker-dealers who wish to sell unregistered securities in reliance on ORS 59.035(9)

- ✓ Securities acquired in ordinary course of business
- ✓ Securities are not part of unsold allotment
- ✓ Price of securities must be reasonably related to market price
- ✓ See OAR 441-065-0040 (2) for list of disqualifiers
- ✓ See OAR 441-065-0040 (4) for submission requirements

E. Condominium Securities (OAR 441-065-0050)

1. Registration process for “condominium securities”, not real estate

- ✓ Security if promoter touts benefits of rental arrangement
- ✓ Security if promoter offers participation in rental pool
- ✓ Security if promoter materially restricts purchaser occupancy

- F. Small Offerings not exceeding \$500,000 (OAR 441-065-0220)
1. Registration procedure for offerings that are exempt under Rule 504 of the '33 Act
 - ✓ Submit Oregon Form 440-2013, not Form U-1
 - ✓ No limit on number of purchasers
 - ✓ Purchasers must be “accredited”, “permitted”, “sophisticated”, or “suitable”
 - ✓ See OAR 441-065-0170 (1) for submission requirements
- G. Small Corporate Offering Registration (SCOR) Procedure for Offerings Not Exceeding \$1,000,000 (OAR 441-065-0225)
1. Small Corporate Offering Registration (SCOR) procedure
 - ✓ Submit Form U-7, not Form U-1
 - ✓ No limit on number of purchasers
 - ✓ Purchasers must be “accredited”, “permitted”, “sophisticated”, “suitable”, or purchase direct from issuer
 - ✓ See OAR 441-065-0110 (1) for advertising restrictions
 - ✓ See OAR 441-065-0225 (2) for list of disqualifiers
 - ✓ See OAR 441-065-0170 (2) for submission requirements
- H. Small Offerings not exceeding \$5,000,000 (OAR 441-065-0230)
1. Registration process for Rule 505 Offering
 - ✓ Submit Oregon Form 440-2013, not Form U-1
 - ✓ No more than 35 non-accredited purchasers
 - ✓ Purchasers must be “accredited”, “permitted”, “sophisticated”, or “suitable”
 - ✓ See OAR 441-065-0170 (4) for submission requirements
- I. Generic Real Estate Paper (OAR 441-065-0260)
1. Registration process available only for licensed mortgage brokers
 2. May permit sale of “fractional interests” (2-10 investors, single mortgage)
 3. May permit sale of “pooled interests” (1 investor, interests in 2+ mortgages)
 - ✓ Must submit “generic” and “specific” offering materials
 - ✓ May require submission of audited financial statements

- ✓ Oregon has not adopted forms [see OAR 441-065-0260 (3)(a)]
- ✓ Not available in all instances [see OAR 441-065-0260 (6)]
- ✓ May petition for 10+ investors [see OAR 441-065-0260 (6)(D)]

J. Certain Compensatory Benefit Plans (OAR 441-065-0270)

1. Registration process for securities that are exempt under Rule 701 of the '33 Act
 - ✓ Issuer must provide participant with full copy of the plan
 - ✓ Issuer-salesperson must be officer, director, general partner, or trustee of issuer, its parent, or majority owned subsidiary or have “significant involvement” in administration of plan
 - ✓ See OAR 441-065-0270 (2) for submission requirements

K. Fairness Hearing (OAR 441-095-0030)

1. Registration process used in connection with a plan to issue securities in exchange for other securities, claims, or property
 - ✓ Implements process authorized by ORS 59.095
 - ✓ Requires Oregon nexus [see OAR 441-095-0030 (1)]
 - ✓ Part One: preliminary review [see OAR 441-095-0030 (3)]
 - ✓ Part Two: testimony at hearing [see OAR 441-095-0030 (4)]
 - ✓ Part Three: ruling on plan [see OAR 441-095-0030 (6)]

Oregon Division of Finance and Corporate Securities
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September 18, 2013

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