

Private Placements, the Internet, and Securities Law



CLASS MATERIALS: *Securities Law Deskbook*, 2018 Edition
by Herrick K. Lidstone, Jr., Esq.

AT THE END OF THIS PROGRAM, YOU WILL BETTER UNDERSTAND –

- What is a Security?
- Conditions and Mechanics of a Private Placement
- Use of the Internet, Rule 506(c), Crowdfunding, and Regulation A+
- Broker-Dealers and Finders
- State and Federal Enforcement
- Obligations of Counsel
- Securities Regulation and the Marijuana Business

...And more!

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Securities Law Deskbook: For Business Lawyers, Public Accountants, and Corporate Management, 2018 Edition, by **Herrick K. Lidstone, Jr.**

Securities Law Deskbook: For Business Lawyers, Public Accountants, and Corporate Management is a practical reference guide to securities law, in one convenient volume. With 17 chapters and hundreds of citations to securities rules, statutes, and cases, it is an essential tool for researching securities regulation, litigation, compliance issues, and much more.

Updated bi-annually, this book is written in non-technical language and is intended for experienced securities lawyers, business lawyers, public accountants and corporate management who need an understanding of federal and state securities laws and a ready reference in a single volume for the complicated issues they confront. *Securities Law Deskbook* includes current law with detailed discussion, expert analysis, and sample forms.

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AGENDA — Presented by **Herrick K. Lidstone, Jr., Esq.**, and **S. Lee Terry, Jr., Esq.**

8:00 AM Registration and Continental Breakfast

8:30 AM **Overview and What is a Security?**

- A general overview of federal and Colorado laws regulating the offer and sale of securities
 - The applicability of the securities laws to various forms of business entities and investments (including non-entity transactions, such as undivided interests in real estate and mineral properties)
 - Debt and equity transactions involving securities
 - Methods of avoiding classification of a transaction as a securities transaction where possible
-

9:30 AM **Conditions and Mechanics of a Private Placement**

- The exemptions available, including:
 - §4(a)(2) and §4(a)(5)
 - Regulation D
 - Intrastate exemption under federal law
 - Available exemptions from registration under the Colorado Securities Act
 - Other state law
- The requirements for a private placement, including:
 - Prohibitions of general advertising for and public solicitation of potential investors
 - Requirements for investor sophistication and financial status
 - Information requirements for offerings involving accredited investors only, as well as when the offering may be directed to non-accredited investors
 - Filing requirements

- The use of projections in disclosure documents for private placements
 - The applicability of the “bespeaks caution” doctrine and various safe harbors
 - Fund escrow agreements
 - Subscription agreements and offeree questionnaires
 - Resale restrictions that are applicable to securities issued in private placements
 - Closing requirements for a private placement
-

10:30 AM Networking Break

10:40 AM **Conditions and Mechanics of a Private Placement** *(continued)*

11:30 AM **Use of the Internet, Rule 506(c), Crowdfunding, and Regulation A+**

- The use of e-mail and issuer (or other person’s) websites in connection with private placements
 - The effect of electronic communications on the private placement and other capital raising activities
 - Issues under both federal and Colorado law
 - NASAA’s “Resolution Regarding Securities Offered on the Internet”
 - Rule 506(c) providing for the general solicitation of accredited investors
 - Compliance and disclosure interpretations issued by the SEC
 - Crowdfunding, both as adopted in Colorado (C.R.S. § 11-51-308.5) and by the Securities and Exchange Commission (Regulation CF, December 2015)
-

12:10 PM Lunch (on your own)

1:30 PM **Broker-Dealers and Finders**

- Placement agents
 - Financial advisors
 - Others who assist companies in private placement financing
 - Registration requirements under federal and state law for broker-dealers
 - Limited exemptions available for finders
 - Federal and Colorado developments relating to M&A brokers
-

2:00 PM **Securities Regulation and the Marijuana Business**

- Like any other business, when seeking capital, owners and operators of dispensaries, growers, and other participants in the marijuana business must comply with federal and state securities regulation. There are some unique aspects of the marijuana business that may make compliance more difficult, including:
 - The limitation on the characteristics of “owners” of marijuana businesses
 - The apparent widespread use of finders locating investors for the industry
 - Disclosure of the fact that the marijuana industry which is legal in Colorado remains illegal under federal law and the laws of neighboring states
-

2:30 PM Networking Break

2:40 PM **State and Federal Enforcement**

- The bases for civil, criminal, and administrative liability under federal and Colorado law
- How the securities regulators find out about potential violations
- How regulators prosecute alleged violators
- Civil and criminal enforcement
- Private rights of action
- Cease-and-desist authority of the Colorado securities commissioner

3:20 PM **Obligations of Counsel**

- Ethical issues of counsel under the rules adopted by the SEC under §307 of the *Sarbanes-Oxley* Act of 2002 and how these impact counsel for private businesses attempting private placements
- The applicability of the Colorado Rules of Professional Conduct to counsel's role in the private placement process, including due diligence, document preparation, and counseling the client
- Whether counsel can accept limitations imposed by the client on counsel's role in the transaction
- Rule 1.1 (competence), Rule 1.2 (scope), Rule 1.6 (confidentiality), Rules 1.7-1.9 (conflicts of interest), Rule 1.13 (organization as a client), Rule 1.16 (declining or terminating representation), Rule 2.1 (advisor), Rule 2.3 (evaluation for use by third parties)
- Formal Opinions 68 (propriety of multiple representation)
- Formal Opinion 109 (acquiring an ownership interest in client)

4:10 PM Adjourn

PROGRAM CHAIR:

Herrick K. Lidstone, Jr., Esq., Burns Figa & Will PC

FACULTY:

S. Lee Terry, Jr., Esq., Davis Graham & Stubbs LLP

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