

QUICK OVERVIEW ON U.S. AND WASHINGTON STATE SECURITIES LAWS (2006)

by Kevin Collette

Are you thinking of raising money in the U.S.? If so, you should be aware that the United States Securities Commission (“SEC”) and each state’s security division regulate the issuance of securities (equity or debt or hybrids) by entities. *The general principle to keep in mind is that any issuance of securities needs to be either registered or have an exemption from registration.* A first time registration by an issue, an initial public offering (“IPO”), is a very time consuming and expensive process which is designed for entities that want to become public entities with their securities traded on the public markets such as the New York Stock Exchange or NASDAQ. On the other side of the spectrum are the majority of the sales of securities that do not get registered. These “private” issuances are unregistered sales which are exempt from both federal and state registration. The SEC and the states’ laws and regulations are generally coordinated and delineate certain exemptions from registration. When raising capital in an unregistered manner, it is important to know at the beginning what the exemptions from registration are and how to carefully proceed so that your sale of securities is in full compliance with the proper exemption.

One of the most commonly used *exemptions* is the “private placement” exemption. The U.S. Securities Act of 1933 (the “Securities Act”) provides the SEC with the authority to exempt certain securities from registration under specific rules. The Securities Act also exempts “transactions by an issuer not involving a public offering.” States, including Washington, have similar exemptions in their laws. The SEC and most states, including Washington provide several “bright line” rules for issuers to adhere to in order to ensure that the issuer’s sale qualifies for one of these “private placement” exemptions. However, the rules can be a trap for the unwary. For example, in order to qualify for most of these private placement exemptions, *the issuer cannot engage in any “general solicitation or advertising.”* There are also rules regarding the information that may need to be provided to the purchaser. These are just two of the rules to be concerned with. There are also federal and state filings to make and filing fees as well. Therefore, before you begin the process of raising capital in the U.S., you should be very careful and know the rules. You should consult with a knowledgeable U.S. securities attorney in the early stages of the process.