

## Securities Lawyer 101

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# Form D - Notice of Sales Requirements After the JOBS Act



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# Form D - Notice of Sale Requirements After the JOBS Act

Companies may use an exemption under Regulation D to offer and sell securities without having to register the offering with the Securities and Exchange Commission ("SEC"). When relying on such an exemption, companies must file what's known as a "Form D" after they first sell their securities. Form D is a brief notice that includes basic information about the company and the offering, such as the names and addresses of the company's executive officers, the size of the offering and the date of first sale.

The SEC recently approved amendments to Form D, adding a box check box requiring issuers to disclose if they are relying on Rule [506\(c\)](#). This Securities Lawyer 101 Q & A Series discusses the most common questions we receive about Form D.

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## Q. What Is Form D?

A. Form D is a notice of an exempt offering of securities in reliance upon [Regulation D](#) (or Section 4(6) of the Securities Act).

## Q. What securities offerings require a Form D filing?

A. Offerings made in reliance upon Rules [504](#), 505, and 506 of Regulation D and Securities Act Section 4(5) require Form D filings.

## Q. What is the due date for my Company's Form D?

A. The Form D must be filed with the SEC no later than 15 calendar days after the "date of first sale" of securities sold based on a claim of exemption under Rule 504, 505 or 506 of Regulation D or Section 4(6) of the Securities Act. For this purpose, the "date of first sale" is the "date on which the first purchaser is irrevocably contractually committed to purchase the securities." If the date on which the Form D is required to be filed falls on a Saturday, Sunday or holiday, the applicable due date is the first business day following.

## Q. What Information is required in a Form D?

A. Form D requires specific information about the issuer and the offering it is conducting. The required information includes (i) the issuer's

identity, (ii) its principal place of business and contact information, (iii) state of domicile (iv) the names and addresses of its executive officers and directors, (v) the specific exemption claimed under the Securities Act, and (v) the identity and contact information of any broker-dealer, finder or other person receiving any commission or other similar compensation relating to the sale of securities in the offering.

## Q. Who receives the Form D when it is filed?

A. The completed Form D must be filed with the SEC if the issuer is relying on [Rule 506](#) of Regulation D. Additionally, state blue sky laws may require the filing of the Form D along with a filing fee.

## Q. How Do I File the Form D with the SEC?

A. The SEC requires the electronic filing of Forms D through the SEC's Electronic Data Gathering, Analysis and Retrieval System ("[EDGAR](#)"). To use EDGAR, the Company must obtain its own filer identification number and filer access codes from the SEC.

## Q. Is the Form D publicly available?

A. Yes, all Forms D filed through EDGAR are available for public viewing on the SEC's website immediately upon filing.

### **Q. Does the Form D have to be amended?**

A. The Form D must be amended (i) to correct a material mistake of disclosure, as soon as practicable after the discovery of the mistake; (ii) to reflect a change in certain reported information (including any change in the issuer's directors or officers), as soon as practicable after the change; or (iii) "annually, on or before the first anniversary of the most recent previously filed notice, if the offering is continuing at that time."

### **Q. What happens if I didn't file a Form D for my Company's offering?**

A. While failure to file a Form D will not necessarily disqualify an issuer from relying upon Regulation D, the failure to file can increase the probability of comments to the issuer's S-1 registration statement or [Form 211](#).

### **Q. Do states require a Form D filing?**

Most states require a notice filing on Form D filing to comply with their own exemptions from registration.

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For further information about [Form D](#), please contact [Brenda Hamilton](#), Securities Attorney at 101 Plaza Real South, Suite 202 North, Boca Raton, Florida, (561) 416-8956, or by email at [info@securitieslawyer101.com](mailto:info@securitieslawyer101.com). This securities law Q&A is provided as a general informational service to clients and friends of [Hamilton & Associates Law Group, P.A.](#) and should not be construed as, and does not constitute legal advice on any specific matter, nor does this create an attorney-client relationship. Please note that the prior results discussed herein do not guarantee similar results.

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