

Securities Lawyer 101

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## Form S-8 Registration Q & A

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# Form S-8 Registration Q & A

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Form S-8 ("[Form S-8](#)") is a short-form registration statement under the Securities Act of 1933, as amended (the "Securities Act") used to register employee and consultant benefit and compensation plans.

This Securities Lawyer 101 Q & A discusses the most common questions we receive from our clients about Form S-8 Registration Statements.

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## **Q. What is a Form S-8 Registration Statement?**

**A.** Form S-8 is a short-form registration statement under the Securities Act used to register employee and consultant benefit and compensation plans.

## **Q. Who can register a securities offering on Form S-8?**

**A.** Form S-8 can only be used by companies that file reports under Section 13 or Section 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act"). In order to register securities on Form S-8, the Company must have filed all reports and other materials required to be filed by Section 13 or Section 15(d) of the Exchange Act during the preceding 12 months or for such shorter period that it was required to file such reports and materials.

## **Q. What are the benefits of registration on Form S-8?**

**A.** Unlike registration statements on [Form S-1](#) or [Form S-3](#), a registration statement on Form S-8 is automatically effective upon filing and the shares registered for non-affiliates may be issued without a restrictive legend.

## **Q. Who can receive securities registered on a Form S-8 registration statement?**

**A.** Form S-8 may be used to register securities offered to employees and consultants under employee benefit plans.

## **Q. What are the requirements for registration of securities on Form S-8?**

- A.** The requirements for use of S-8 are as follows:
- the recipient of shares registered on Form S-8 must be a natural person and not a corporate entity;
  - the shares registered on Form S-8 may only be used to compensate a person for bona fide services provided to the issuer;
  - the services provided must not be in connection with a capital raising transaction, reverse merger or promotion of an issuer's securities; and
  - the agreement for the services provided must be in writing.

## **Q. Can shell companies register securities on Form S-8?**

**A.** No, a company that has been a shell company in the 60 days prior to the filing of the Form S-8 registration statement cannot register securities on Form S-8.

**Q. What types of service providers are prohibited from being compensated with securities registered on Form S-8?**

**A.** Securities covered by a Form S-8 registration statement cannot be used to compensate for certain types of services. This is one of the most significant limitations imposed by Form S-8.

Issuers are prohibited from using Form S-8 to register shares in connection with the following:

- shareholder communications services (i.e. preparation of press releases or other publicly disseminated information regarding the issuer);
- arranging for or effecting merger transactions which cause a private company to become publicly traded;
- capital raising services;
- Internet or other newsletter writers who “tout” the issuer’s securities, recommend the issuer’s securities or who otherwise simply discuss the issuer’s business;
- spam email services; and
- any other service which relates to the publishing or dissemination of information that can reasonably be expected to influence the price of the issuer’s securities.

**Q. Can shares registered on Form S-8 be used to repay loans made to the issuer?**

**A.** No, using securities registered on Form S-8 to repay loans to the issuer is prohibited.

**Q. Are shares registered on Form S-8 that issued to a Company’s officers and directors restricted securities?**

**A.** Shares registered on Form S-8 that are issued to officers, directors or other affiliates are unrestricted but subject to the volume limitations of Rule 144 imposed upon control securities.

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For further information about Form S-8, 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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