



**OFFICE OF THE GEORGIA SECRETARY OF STATE**

# **STATE SECURITIES OVERVIEW: CAPITAL FORMATION UNDER BLUESKY**

**Presented by the  
The Securities & Charities Division  
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# Our Division Mission

The **Securities and Charities Division** administers the regulatory provisions of:

The Georgia Securities Act of 2008, as amended, (O.C.G.A. 10-5-1 *et seq.*) & the Rules of the Georgia Commissioner of Securities (Ga. Rules and Regulations Chapter 590-4 *et seq.*)

The Georgia Charitable Solicitations Act of 1988, as amended (O.C.G.A. 43-17-1 *et seq.*) & the Charitable Solicitation Rules (Ga. Rules and Regulations Chapter 590-9 *et seq.*)

## ***Protect Investors and Markets***

To educate and protect Georgia investors and consumers while fostering efficient capital formation in Georgia in order to enhance legitimate capital formation and to minimize the unnecessary burden and expense of regulatory compliance by legitimate businesses.

# Division Responsibilities

## REGISTRATIONS

- Industry firms, industry professionals, securities offerings.

## EXAMINATIONS

- All registrants are subject to examination of books and records.
- Conducted to determine compliance with state securities laws and regulations and to ensure that these investment advisers meet the obligations they owe to their clients.

## ENFORCEMENT

- Enforcement seeks to prevent, detect, and redress violations of the Act and Rules.
- The Enforcement Attorneys investigate cases involving potential violations of the Acts and protect our constituents.

## EDUCATION & OUTREACH

- The Division carries out numerous education and public outreach activities, and also provides technical assistance and regulatory guidance to industry.
- The Division works closely and cooperatively with federal and state securities agencies.

# Introduction to Securities

- Every security must be either Registered or Exempt on **both** the Federal and State governmental levels.
  - **Registering** a security means that the Issuer has filed a registration statement and other required documents with the relevant regulator.
  - **Exempted** securities are securities that meet one of various available exemptions to the federal or state obligation to register. Some may have notice filing obligations.
    - Exempt Securities O.C.G.A. § 10-5-10
    - Exempt Transactions O.C.G.A. § 10-5-11

# What is a Security in Georgia?

Georgia's definition of security includes the following (which can be found in § 10-5-2(31) of the Securities Act:

- Note
- Stock
- Treasury stock
- Security future bond
- Debenture
- Evidence of indebtedness
- Certificates of interest or participation in a profit-sharing agreement
- Collateral trust certificate
- Preorganization certificate or subscription
- Transferable share
- Investment contract
  - Includes an investment contract an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor. In this situation common enterprise mean an enterprise in which the fortunes of an investor are interwoven with those of either the person offering the investment, a third party, or other investors.
  - An interest in a limited partnership (i.e., hedge fund interests) or a limited liability company and an investment in a viatical settlement or similar agreement.
- Voting trust certificate
- Certificate of deposit for a security
- Fractional undivided interest in oil and gas (i.e., royalty interests), or other mineral rights
- Put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency (i.e., FOREX – and these are typically with the CFTC/NFA)
- In general, an interest or instrument commonly known as a “security”
- A certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed above

# What is a NOT a Security in Georgia?

- An insurance or endowment policy or annuity contract under which *an insurance company promises* to pay a fixed or variable sum of money either in a lump sum or periodically for life or other specified period.
- An interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974.
- A transaction secured by a mortgage.

# Origin of “BlueSky” Laws

"speculative schemes which have no more basis than so many feet of 'blue sky'"

[Hall v. Geiger-Jones Co., 242 U.S. 539, 550, 37 S. Ct. 217, 220-221, \(1917\)](#)

- Upheld states' ability to require licenses for securities issued within a state.

# Common BlueSky Filings

- Notice Filings

- Regulation D
- Regulation CF
- Regulation A+ (Tier 2)
- Mutual Funds
- Unit Investment Trust

GA Fees

\$250 initial fee

No fee

No fee

\$250 initial/\$100 renewal

\$250 initial/\$100 renewal

- Registration Filings

- Regulation A+ (Tier 1)
- Registration by Coordination
- Rule 504
- Registration by Qualification
- Not-for-Profit Securities

GA Fees

No fee

No fee

No fee

No fee

No fee

# Reg. A+ Filings

- **Tier 1:**
  - Offerings up to \$20 million
  - No ongoing reporting requirements
  - Coordinated review with states is available
- **Tier 2:**
  - Offerings up to \$50 million
  - Reporting requirement while the offering is open or where there are more than 300 investors (higher if issuer is bank or bank holding company)
  - Audit requirement
  - State review is preempted (can require notice filing)

# Reg. A+ Filings\*

- As of September 30, 2018:
  - **Tier 1:**
    - 116 filings seeking \$1.03 billion
    - Average dollar amount sought: \$8.9 million
    - \$168 million reported sold
  - **Tier 2:**
    - 224 filings seeking \$6.08 billion
    - Average dollar amount sought: \$27.1 million
    - \$1.14 billion reported sold

\*statistics from NASAA

# NASAA Coordinated Review Program

- Created in May 2014
- Almost all NASAA U.S. member jurisdictions participate
- Issuers submit filings to Washington St. Securities Division (program administrator)
- Issuers select 2 to 50 jurisdictions for offering
- Specific review protocol and timeframe for review
  - Lead merit and disclosure examiner appointed within 3 business days of filing
  - Lead examiners must provide participating states a draft comment letter within 10 business days
  - States have 5 business days to review
  - Final comment letter is due to Issuer within 3 business days

# Regulation CF

## (“Reg. Crowdfunding”)

- Started in 2016 as part of Title III of the JOBS Act
- Allows offerings of up to \$1,070,000 in a 12-month period
- All offerings must be made through an intermediary
  - Intermediaries are registered with FINRA
- Investment limits are based on investor’s income and previous investments in Regulation CF offerings
  - Investment limits apply to accredited investors
- States are preempted from registration and qualification of offerings but can require notice filings (and fees) for offerings where:
  - (1) the state is the principal place of business for the Issuer, or
  - (2) the state is home to purchasers of 50% or more of the aggregate value of the securities issued in the offering

# Regulation CF Statistics

- As of September 30, 2018:
  - Number of offerings initiated: 1,155
  - Aggregate offering amount sought: \$681 million
  - Average maximum amount sought: \$613K
  - Average target offering amount: \$72K
- Amounts reported in completed offerings (Form C-U):
  - Completed offerings: 456
  - Total amount raised: \$99.2 million
  - Average amount raised per offering: \$218K
- 47 funding portals registered with FINRA (as of 1/31/19)

\*statistics from NASAA

# Capital Market Statistics (“Unregistered Securities”)

From the SEC’s Division of Economic and Risk Analysis (DERA)

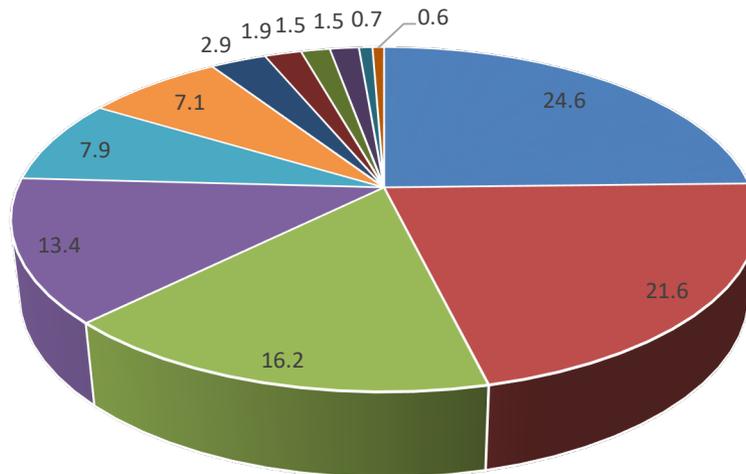
- In 2017, 37,786 Regulation D offerings were reported to the SEC to raise more than \$1.8 trillion in capital
  - Hedge funds raised \$382 billion
  - Private Equity funds raised \$582 billion
  - 22% were foreign issuers (Canada, Cayman Islands, UK)
  - Estimated 398,000 investors participated in Reg. D offerings
    - 91% of investors were accredited investors
  - The median size of offerings by non-financial Issuers is less the \$1 million
- From 2009-2017, 99.9% of Reg. D offerings were conducted under Rule 506(b) or 506(c)

\*Scott Bauguess, Rachita Gullapalli, and Vladimir Ivanov, Capital Raising in the U.S.: An Analysis of the Market for Unregistered Securities Offerings, 2009-2017, U.S. Securities and Exchange Commission (August 2018)

# Capital Market Statistics (“Unregistered Securities”)

Most Active Non-Fund Issuers (by number of filings 2009-2017):

Technology (24.6%)  
Other (21.6%)  
Real Estate (16.2%)  
Health Care (13.4%)  
Banking (7.9%)  
Energy (7.1%)  
Manufacturing (2.9%)  
Retailing (1.9%)  
Business Services (1.5%)  
Restaurants (1.5%)  
Agriculture (0.7%)  
Travel (0.6%)



\*Scott Bauguess, Rachita Gullapalli, and Vladimir Ivanov, Capital Raising in the U.S.: An Analysis of the Market for Unregistered Securities Offerings, 2009-2017, U.S. Securities and Exchange Commission (August 2018)

# Capital Market Statistics (“Unregistered Securities”)

DERA found that both the number of unregistered securities offerings, particularly Reg. D, and the amount of capital raised under the offerings was positively correlated to the health of the broader economy.

Increase in Reg. D filings during the recent Federal Government shutdown:

- Reg. D Offerings filed in Georgia (Jan. 2019): 576
- Reg. D Offerings filed in Georgia (Dec. 2018): 253 (128%)
- Reg. D Offerings filed in Georgia (Jan. 2018): 433 (33%)

\*Scott Bauguess, Rachita Gullapalli, and Vladimir Ivanov, Capital Raising in the U.S.: An Analysis of the Market for Unregistered Securities Offerings, 2009-2017, U.S. Securities and Exchange Commission (August 2018)

# Electronic Filing Depository (EFD):

Facilitated by NASAA for the electronic filing of Reg. D offerings and Unit Investment Trust (UIT) filings (any payment of fees) for one or more state jurisdictions:

- 13 states require electronic filing of Reg. D offerings
- More states are proposing requirements for electronic filings

The ability to electronically file UIT offerings was added in 2018

The ability to electronically file Mutual Fund offering is being constructed

# LPL Multistate Action

In May 2018, NASAA announced a multi-state enforcement action concerning LPL Financial's failure to prevent the sale of unregistered, non-exempt securities to clients.

- Settlement with all NASAA jurisdictions included \$26 million civil penalty
- Requirement to offer to repurchase all affected securities with a 3% annual interest rate
- On-going reporting requirement to all states detailing internal efforts to prevent similar failures

# The Invest Georgia Exemption

## GA Rule 590-4-2-.08

Created in 2011 to allow for Georgia companies to utilize the exemption provided for by Section 3(a)(11) and the safe harbor of Rule 147

- Issuers can raise up to \$5 million for Georgia investors
- Individual investment limits of \$10,000 for non-accredited investors. No limit for accredited investors
- Must file a Form GA-1 with the Georgia Securities Division to use the exemption
- Safe harbor from broker-dealer registration for disclosed individuals associated with offering
- No required financials
- No required on-going reporting

# The Invest Georgia Exemption

## GA Rule 590-4-2-.08

Amended in 2017 to accommodate the SEC's creation of Rule 147A

- Broadened how the residency of issuer was determined
- Lessened the impact of out of state solicitations on the exemption

To date, 71 issuers have filed the necessary paperwork to use IGE

Issuers have included: tax companies, movie productions, breweries, clothing companies, cybersecurity providers, manufacturers, film industry vendors, restaurants, and real estate firms

# Fairness Hearings

## O.C.G.A. § 10-5-11(9)

Transactional exemption for shares issued as a result of a business combination.

Allows transaction to qualify for the federal exemption under Section 3(a)(10).

To qualify, 51% or more of the persons to whom it is proposed to issue securities under the combination plan must be Georgia residents, and:

(1) the applicant is a domestic business entity formed, organized or incorporated under Georgia law, or

(2) the applicant is a business entity whose headquarters or principal place of business is located in Georgia

# Division Contact Information

C. Ryan Germany  
Assistant Commissioner of Securities  
General Counsel  
(404)657-7778  
[rgermany@sos.ga.gov](mailto:rgermany@sos.ga.gov)

Noula Zaharis  
Division Director  
(404) 654-6034  
[nzaharis@sos.ga.gov](mailto:nzaharis@sos.ga.gov)

Charlie Jarrett  
Senior Enforcement Attorney  
(404) 232-1505  
[cjarrett@sos.ga.gov](mailto:cjarrett@sos.ga.gov)

Blake Kennedy  
Enforcement Attorney  
(404) 654-6022  
[bkennedy@sos.ga.gov](mailto:bkennedy@sos.ga.gov)

Nicholas Vretakis  
Enforcement Attorney  
(404)654-6033  
[nvretakis@sos.ga.gov](mailto:nvretakis@sos.ga.gov)