

MEMORANDUM

TO: [Client]
FROM: Daniel A. Shmalo, 360 Venture Law
RE: Private Placement Mechanics
DATE: _____, 2010

This memorandum will outline suggested procedures for making a private offering of securities pursuant to offering documents or a private placement memorandum (referred to generically as a “PPM”).

You should answer, consider or complete the following BEFORE to creating the PPM:

1. Consents necessary for authorizing the number, price and class of shares in the offering, the PPM, and the transaction documents.
2. Which securities exemption are you planning to utilize?
3. Which states are you planning to offer the securities in? have you completed your blue sky research?
4. I would suggest a minimum/maximum offering to break escrow.
5. What are your information disclosure requirements under both state and federal law? (ie do you really need a statutory private placement memorandum?)

BEFORE you send copies of the PPM, please keep the following in mind:

1. Offering Control. Remember to: (a) write the recipients name and a control number on the cover page of each copy of the PPM that you send out; (b) keep a Control Sheet for the offering, and record the recipients the control numbers, and the results, and (c) keep updated copies of the Control Sheet.
 2. Blue Sky. Notify counsel before you send a copy of the PPM to any state other than Georgia or to an agent or employee who might send a copy of the PPM to any such other state. Counsel needs to make sure that you comply with the Securities laws of each state (“**Blue Sky laws**”) to which you send a copy of the PPM. Sending a PPM may be construed as making an offer of securities for purposes of state securities law. In certain States (e.g. New York) it may be necessary to complete filings *before* (rather than after) the Closing.
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When you send the PPM to potential investors, make sure you include the following items:

1. a cover letter describing the documents enclosed and the procedures that must be followed to consider the offer;
2. the PPM itself; and
3. a "Subscription Booklet;" which includes:
 - (a) Investor Qualification Questionnaires
 - (b) Subscription Agreement (or Stock Purchase Agreement)
 - (c) Shareholder Agreement
 - (d) Any other applicable transaction documents.

THE OFFERING

1. No General Solicitation or Advertising. Regulation D prohibits (with few exceptions) general solicitation or advertising. You can contact prospective investors only directly, and not through any general medium. The following are examples of prohibited actions:

- no posts to your Web site;
- no circulated advertisements;
- no cold calling.

This is a very important issue. If you have any questions, please call counsel ASAP!

2. Investor Documents. Investors are required to sign and return the following to you (i) Investor Questionnaire, (ii) Subscription Agreement, (iii) agreement to become a party to Shareholders Agreement, and (iv) agreement to become a party to any other deal agreement. You must carefully check the investor documents before you accept their subscription.

- (a) **Investor Questionnaire.** We have provided separate questionnaires for individuals, trusts, corporations, limited liability companies, and retirement plans. Make sure that the investor completes the correct questionnaire. Do not accept the wrong questionnaire. If the investor completes the wrong questionnaire or fails to complete the questionnaire fully, you must return the questionnaire to the investor so that it can be completed correctly. Please carefully check to see that the appropriate box is **initialed** to indicate the investor's basis for claiming to be an accredited investor. Do not accept substitute answers or rationalizations. For example, a Trust is not an accredited investor simply because the beneficiaries are accredited. Therefore, you cannot accept an individual questionnaire signed by a beneficiary for a Trust. Note that the boxes must be **initialed**. Do not accept a checkmark. The investor may later deny that they inserted the checkmark in the box. Do not initial or complete a questionnaire for an investor. It must be filled out and signed by the investor.
- (b) **Subscription Agreement.** Check to make sure that the party executing the Questionnaire is the same party that signs the Subscription Agreement. The Subscription Agreement must give the information regarding the social security or employer identification number, the number of shares subscribed and the aggregate purchase price. Occasionally, we have questions regarding the authority of the person signing on behalf of an entity. For example, if the signature does not appear to be the

name of the person listed as an executor of a trust, we must obtain the trust document to prove up the authority to sign and bind the trust.

- (c) **Agreements to Become a Party to Shareholder Agreements.** Make sure the party that signs these agreements is the *same* as the party that has signed the Subscription and Questionnaire. If the investors are joint tenants, *both investors* must fill in the Questionnaire information and sign all documents. Check carefully for signatures.

In addition to sending counsel updated copies of the Control Sheet (described above), send counsel a copy of the executed Subscription Agreements, Investor Questionnaires and Shareholders Agreements that you receive from each investor. **Do not accept an offer to subscribe until you have received a completed and executed Subscription Agreement, Investor Questionnaire and Shareholders Agreement.**

THE CLOSING

3. Investment Funds. Notify each investor in writing when the Company decides to accept that investor's offer to subscribe. According to the law in some states, an investor can decide to revoke his offer to subscribe for shares for a period of time after such investor's tender of the consideration to you (a Pennsylvania resident has two business days to revoke, Florida investors have three). Therefore, you should deposit the money in a bank account (you may use an escrow account) and not use any of the fund until the applicable number days have passed. If the offering has a minimum subscription amount to break escrow, you will need to wait until the total of all accepted subscriptions exceeds the minimum.

4. Closing Procedures. At each closing, we request that you allow an attorney to review the subscription and closing documents before acceptance of the subscription and issuance of the share certificate. In this way, we can make sure that procedures are in place for complying with Federal and State securities laws, including any required filings, and to make sure that the investor has completed all of the information appropriately. Accompanying this memorandum is a Control Sheet to be executed all documents completely and accurately.

5. Federal and State Securities Law Compliance. At each closing, you *must* prepare, sign and file a Form D and any applicable State securities law filings. Your counsel will prepare and file the Form D as well as required State forms. Note that since March 16, 2009, the Form D can ONLY be filed online. Also, please note that in order to file the Form D electronically you will need to obtain EDGAR filer codes (a Central Index Key ("CIK") number and CIK Confirmation Code. In order to make sure that all State laws are complied with, you should discuss which states you will be making offers in with counsel, PRIOR to making the offers.

6. Preparation of the Stock Certificate. At the closing, you will prepare a stock certificate. Do not close and deliver a share certificate until investment funds have cleared into the escrow account, and have been released from the escrow account into the Company account after the applicable number of days. It may not be legally possible to retrieve the shares from a subscriber who has not paid. You may legally be entitled only to collect the payment, and not to cancel the shares.

The stock certificate must be signed and dated the date the Subscription is accepted by the Company. Each certificate *must* contain a legend noting that it is a "restricted" security. We will provide you with the form of this legend. The front of the certificate must contain the following notation: "*The shares represented by this certificate are restricted securities and are subject to the restrictions set forth on the reverse side hereof.*" The share certificate should be forwarded with a letter, and a receipt. We always recommend that share certificates be delivered by Federal Express or by certified mail, return

receipt requested, to provide proof of delivery. To ensure the execution and return of the stock certificate receipt, it is suggested that a prepared self-addressed, stamped envelope be enclosed with the delivery of the stock and other documents to the investor. The signed stock receipt will be maintained in the corporate minute book with a two sided copy of the stock certificate issued.

7. Annual Amendment. As of March 16, 2009, all Form D fillings must now file an annual amendment if they have an ongoing offering as of one year after their initial Form D filing (and annually thereafter if the offering is ongoing). NOTE: even Form D fillers that initially filed before March 16, 2008 must file an amendment before

8. Burden of Proof File. A "Burden of Proof file" should be established for each investor, and should contain the original signed agreements, a two-sided copy of the stock certificate issued, a copy of the stock certificate receipt which is returned to the Company as well as any other correspondence related to the investment by the individual.

9. Closing Binder. After the final closing we will make a closing binder for the private placement which will include the corporate resolution authorizing the private placement, copies of the Private Placement Memorandum, the investor subscriptions and questionnaires, the shareholder's agreements, stock certificates, a copy of the signed stock certificate receipts and copies of the Form D and Blue Sky filing documents.

We hope that the information in this memorandum is helpful to your business. Should you have any questions regarding these or any related matters, please do not hesitate to contact us:

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