

# Legal and Corporate Considerations in Raising Capital.

James Dodrill, Esq.  
Law Office of James G. Dodrill II, P.A.  
[jim@jimdodrill.com](mailto:jim@jimdodrill.com)  
[WWW.JIMDODRILL.COM](http://WWW.JIMDODRILL.COM)



# Disclaimer

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# Framework

- My Background.
- Preparing to Raise Funds – preliminary issues.
- Initial Fundraising.
- Common Alternative Private Offering Structures.
  - Time constraints prevent discussion of public alternatives.
- Other General Legal Issues.

# My Background

- Brown University, business management and psychology.
- Wall Street M&A in the 1980's.
- University of Miami School of Law, *Magna Cum Laude*.
- Practiced corporate and securities law in NYC at Latham & Watkins, one of world's largest law firms.
- Co-founder of own company, raising almost \$10M and going from concept to IPO in 3 years, achieving sales in 17 states.
- Left company to combine experiences and advise small to mid-size companies on corporate and securities legal matters.
- Personal

# Beginning at the Beginning.

- Pre-Offering & Corporate Structure Considerations.
  - Choice of Entity.
  - Capitalization Structure.
  - Comprehensive Agreement among Founders.
  - Assignment of inventions and IP.
  - Protection of IP.
  - NDA, Non-competition and Employment Agreements.
  - Equity Incentive Plans.

# Initial Capital: Beware the Euphemisms

- Friends and Family rounds, seed capital, procuring investors, silent partner(s), SAFEs...
- Remember these are ALL the sale of securities.
- Federal and State (Blue Sky) Law implications.
- Shareholder Agreements for the investors.
  - ROFR.
  - Pre-emptive vs Anti-dilution.
  - Drag Along and Tag Along Rights.
  - Registration Rights.
  - Lockup if IPO.

# Additional Offerings

- As with above, EVERY sale of a security must either be registered with the SEC or completed in a manner exempt from registration.
- Fact driven decision regarding what exemption to use.
  - How much funding is needed?
  - What access do you have to potential investors?
  - Who are the potential investors?
  - What type of investors do you want? (Passive, Active, Strategic)
  - Bad Actors?
  - Equity vs Debt?

# Private Placements

- Limiting discussion to Rule 506.
  - 506(b) vs 506(c).
  - UNLIMITED AMOUNT.
  - 506(b) – traditional private offering
    - Accredited and up to 35 Unaccredited.
      - Including unaccredited increases burden on the company.
    - Pre-existing Substantive Relationship.
  - 506(c) – general solicitation ok.
    - ONLY Accredited investors.
      - Reasonable steps to verify, self-certification insufficient.



# Crowdfunding

- Product/Project vs Securities.
  - P/P – sites like Kickstarter and Indiegogo.
  - Regulation Crowdfunding.
    - Must be private company.
    - Max raise \$1,070,000 per year.
    - Limits on how much investor can invest in any one offering AND annually.
    - Must use intermediary (B/D or Funding Portal).
    - Form C required to be filed with SEC.
    - Bad Actor Disqualification.
    - Ongoing reporting requirements.

# Preparing for Venture Capital & Private Equity

- Must have governance and compliance in order.
  - Equity-holder meetings.
  - Board meetings.
  - Minute book.
  - Financial records.
  - Record of owners and their rights.
- Any uncertainty can spook investors.
- Know your audience.

# Other General Legal Considerations

- Lose the Finders.
  - Can issuer legally pay a Finder's Fee?
  - What kind of compensation is problematic?
  - What is the issuer does it anyway?
- Speak with experienced attorneys.
  - The danger of ubiquitous forms
    - Not prepared with your specific rights, obligations, needs, compliance requirements or general circumstances in mind.
    - Can have unintended circumstances.

# ANY QUESTIONS?

James Dodrill  
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jim@jimdodrill.com  
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