High Tech Counsel Corner

Entrepreneurs often discover after receiving start-up capital from friends and family that they have inadvertently violated New Hampshire's securities law. Failure to comply (deliberately or unknowingly) with securities law at the start-up stage risks enforcement action by regulators and substantial administrative penalties, as well as legal fees in "cleaning up" violations. Fortunately, recent amendments to the State's securities law make it easier to avoid or minimize the effect of inadvertent violations. Here are some highlights of the changes:

Isolated Sales Exemption Expanded. Generally, the State's securities law requires registering the offer or sale of securities (such as a company's stock) unless an exemption from registration is available. New Hampshire's securities law has a number of exemptions available to start-ups; the two most common of which are the "founders exemption" and the "isolated sales exemption". The founders exemption allows the company to make up to 10 sales of securities within 60 days after the company's formation without having to register the sales.

Start-ups may find that 60 days is too short a period to bring in all the initial investors. If a company needs more time, it may then rely upon the isolated sales exemption, which, prior to July 1, 2006, was limited to no more than 5 sales over a rolling 12 month period. Effective July 1, 2006, the number of permitted isolated sales increased to 10 during any rolling 12 month period, subject to a limit of 25 such sales over the life of the company.

Stacking of Exemptions. In addition to expanding the isolated sales exemption, the State's securities law was also amended to permit stacking of exemptions. Now, future sales which qualify for other exemptions, or are preempted under federal securities law from registration under the State's securities law, may be stacked onto previous isolated sales. This means that if future financing efforts attract angel or venture capital investors in transactions which are exempt from the State's registration requirements, the company can make those sales without disqualifying previously exempted sales made within the 12 month period preceding the angel/venture capital financing.

Late Filing Fee. Companies undergoing financing rounds with angel investors or venture capital firms often rely upon the SEC's Rule 506, which requires filing a notice of sale with the SEC and the State's regulators within 15 days following the first sale. Companies occasionally miss this filing requirement, resulting in potentially costly and time-consuming enforcement action by the State's regulators. The State's securities law now provides for a late filing fee, which allows companies the opportunity to avoid enforcement proceedings and significant fines, provided filing is made within one year of when due.