What is a private secondary market?

Startups and other companies that raise capital via exempt offerings—sometimes referred to as private offerings—are often liquid. Unlike securities of publicly traded companies, securities of privately held companies may not be freely traded by investors. The transactions or markets where investors sell these securities to other investors are called private secondary transactions or private secondary markets.

What do I need to consider before engaging in a private secondary transaction?

Do my securities have federal securities law restrictions?

Generally, depending on how the securities are sold initially, the securities may be deemed restricted. This can include securities purchased from the company or in a secondary transaction from an affiliate of the issuer. Restricted securities are not freely tradeable and typically bear a “restrictive” legend that notes the resale limitations of the securities.

Do my securities have federal securities law restrictions?

Some examples of restricted securities include securities acquired in:
- Regulation A offerings (Regulation S)
- Private placement offerings
- Intrastate offerings (generally, after 6 months)
- Offshore transactions (Regulation S)

What do I need to consider before engaging in a private secondary transaction?

What federal pathways are frequently used by smaller business investors to sell their securities and how do those pathways overlap with state requirements?

There are several federal exemptions available for small business investors to sell their securities in a private secondary transaction. Some examples of federal exemptions are:
- Rule 144 Safe Harbor under the Section 4(a)(1) Ordinary Trading Exemption (Rule 144)
- Section 4(a)(1) Ordinary Trading Exemption (Section 4(a)(1))
- Rule 506(c) Safe Harbor under the Section 4(a)(1) Ordinary Trading Exemption (Section 4(a)(7))

If an investor's offering meets the requirements of one of the following exemptions, that resale offering still needs to be registered or meet an exemption under state securities laws, unless the issuer of the security is a reporting company. In addition, state securities regulators have authority to investigate and bring enforcement actions for fraud, impose state notice filing requirements, and collect state fees.

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Have suggestions on additional educational resources? Email smallbusiness@sec.gov.