

Question 139.27

Question: A company completes a private placement of securities in reliance on the Section 4(2)(a)(2) exemption and then files a registration statement for the resale of the privately-placed securities. After the filing of the registration statement but prior to its effectiveness, the company commences and completes a second private placement that is consistent with the interpretive guidance on general solicitation provided in Securities Act Release No. 8828 (Aug. 10, 2007 Rule 152(a)(1)). Can the company then include the securities from the second private placement in a pre-effective amendment to the pending resale registration statement prior to effectiveness?

Answer: Yes. The second private placement must be consistent with the interpretive guidance in the release and it must be completed before the company can file a pre-effective amendment to include the securities from the second private placement in the resale registration statement.
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