

SecondMarket Secondary Trading Developments

SEC Advisory Committee on Small and Emerging Companies
March 4, 2015

SecondMarket enables private issuers to customize, control and efficiently execute private securities transactions.

- Founded in 2004
- FINRA registered broker-dealer
- The leader in broad-based secondary transactions; over \$2.5 billion dollars in transaction volume since 2013

\$1.4 billion in secondary transactions were completed on SecondMarket's platform in 2014, a 400% increase from 2013.

- Companies are staying private longer
 - **73** VC-backed companies valued over \$1 billion¹ (compared to **13** in 2012)
 - Median IPO age of tech company is now **11** years²
- More access to private financing - VC activity at highest level since 2001³
- Amendment to Section 12(g)(1)(A) increased registration threshold to 2,000 holders of record (excluding employees)
- Broad-based private tender offers currently the most popular way to provide partial liquidity for today's private companies who control:
 - Who buys and sells shares
 - Price
 - Shareholder participation levels
 - Timing

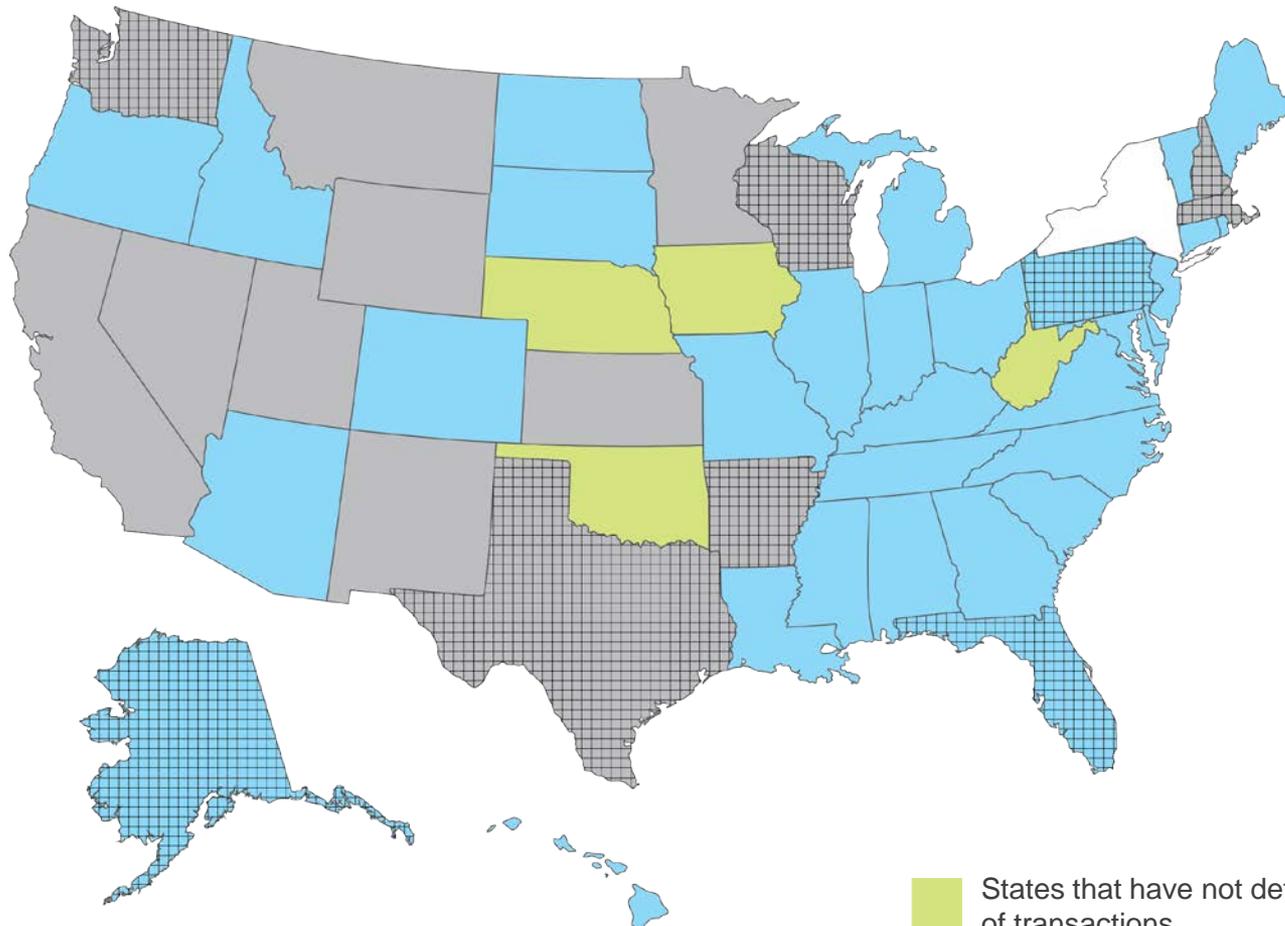
The profile of a typical private tender offer candidate:

Median Valuation:	\$950 million
Median Funding Raised:	\$158 million
Median # of Employees:	300
Median Company Age:	7 years
Most Common Industry:	Enterprise Software

- ▶ Four resale exemptions generally applicable to secondary transactions
 - Isolated non-issuer transaction
 - Institutional exemption
 - Manual Exemption
 - Unsolicited Broker Dealer
 - Inconsistent with SEC and FINRA rules applicable to broker dealers with substantial pre-existing relationships with customers
 - Makes it virtually impossible for broker dealers to identify buy-side interest on behalf of private companies interested in providing limited shareholder liquidity

ISOLATED NONISSUER TRANSACTIONS

All states, except NY, provide an exemption for isolated nonissuer transactions.



31 STATES have not established limits on the number of transactions.

14 STATES have established limits on the number of transactions.

4 STATES have not definitively established limitations on the number of transactions.

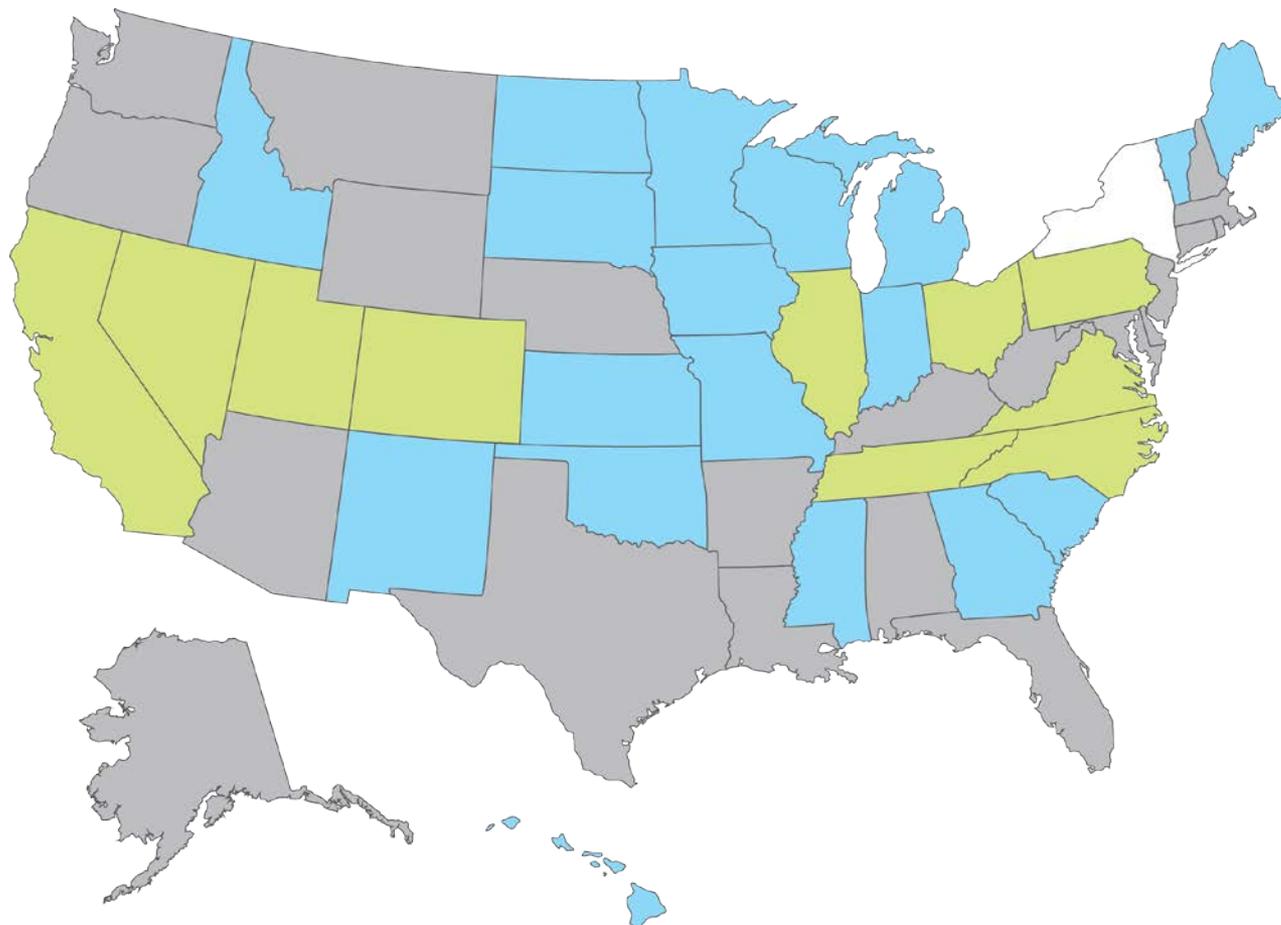
9 STATES limit or prohibit reliance on the exemption by affiliates.

- States that have not established limits on the number of transactions
- States that have established limits on the number of transactions

- States that have not definitively established limits on the number of transactions
- States that prohibit reliance by affiliates
- States that do not offer this exemption

OFFERS OR SALES TO INSTITUTIONAL INVESTORS

All states, except NY, provide an exemption for sales to institutional investors.



18 STATES have adopted the Uniform Securities Act of 2002 standard form of exemption.

21 STATES have adopted the Uniform Securities Act of 1956 form of exemption.

10 STATES provide a non-standard version of the exemption.

 States that have adopted the Uniform Securities Act of 2002 standard exemption

 States that have adopted the Uniform Securities Act of 1956 form of exemption

 States that offer a non-standard version of the exemption

 States that do not offer this exemption

Need for Codification of Rule 4(a)(1 ½)

► Issues

- The majority of private company equity is held by employees in the form of options.
- Rule 144 is only available if common or preferred has been held for 12 months and is not available to affiliates.
- Rule 4(a)(1 ½) is only available method for secondary sales that do not satisfy Rule 144 but is subject to different interpretations.
- Market needs a clear and sensible federal level safe harbor for these transactions.
- Current application of blue sky rules on secondary transactions makes little sense where state law does not apply under Rule 144, Rule 506(b) and (c) and Rule 701.
- Problematic practices are developing to help finance option exercise without benefit of sale of underlying common stock.
- SEC has historically been unwilling to provide no action relief regarding Rule 4(a)(1 ½).

PROPOSED SECTION 4(a)(7)

EXEMPTED TRANSACTIONS

SEC. 4. (a) The provisions of section 5 shall not apply to--

- (1) transactions by any person other than an issuer, underwriter, or dealer.
- (2) transactions by an issuer not involving any public offering.

* * * *

(7) transactions meeting the requirements of section 4(d)(1).

(d) (1) Transactions exempt under section 4(a)(7):

(a) shall be limited to transactions where each purchaser is an accredited investor as that term is defined in section 230.501(a) of title 17, Code of Federal Regulations (or any successor regulation);

(b) shall not be available for sales by (i) an issuer as defined in section 2(a)(4), its subsidiaries or parent, or (ii) any underwriter acting on behalf of the issuer, its subsidiaries or parent, which receives compensation from the issuer with respect to such sale, or (iii) any dealers; and

(c) shall not be available if the seller of securities or any person acting on its behalf offers or sells the securities by any form of general solicitation or general advertising.

(2) Securities sold in reliance on section 4(a)(7) shall be deemed to have been acquired in a transaction not involving any public offering.

(3) A transaction meeting the requirements of section 4(a)(7) shall be deemed not to be a "distribution" as that term is used in section 2(a)(11).

* * * *

SEC. 18 (b) COVERED SECURITIES.— For purposes of this section, the following are covered securities:

* * * *

(4) EXEMPTION IN CONNECTION WITH CERTAIN EXEMPT OFFERINGS. – A security is a covered security with respect to a transaction that is exempt from registration under this title pursuant to –

* * * *

(F) section 4(a)(7).