



AT THE BAR WITH BOWDITCH

A Legal Blog for the Craft Brewing Community

Beer and the SEC: Securities Considerations for Funding a Growing Brewery

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Breweries in start-up or growth mode, like other growing or emerging companies, have a lot to worry about. From entity formation to hiring employees, from obtaining proper licensing to perfecting recipes, with so much going on, it is understandable why founders might feel stressed. What might cause even more stress and anxiety are all of the important steps that founders may not even know existed!

Funding is likely a top priority for any growing brewery. Brewing is a capital-intensive business, and brewery owners will need to consider a variety of financing sources, including investment by outside parties. However, offering an ownership interest of a company for sale likely triggers securities law obligations. Whether offering equity to friends, family or a third party, breweries, like other companies, need to pay attention to, and act quickly in complying with, securities laws at both the federal and state levels.

Any time there is a sale of securities (i.e., stock in a corporation, membership interests in a limited liability company, convertible notes, or even a loan made by a person that is not in the business of lending money) – state and federal securities laws are likely triggered, and, a company likely has the obligation to register with U.S. Securities and Exchange Commission (SEC) or find an applicable exemption from registration. While most offerings for growing breweries in early and development stages will fit within an exemption from registration, that does not mean the work is done. Not only does the brewery need to ensure the requirements of the applicable exemption are satisfied, but also that necessary filings are prepared and submitted.

Each specific exemption from SEC registration calls for careful attention to ensure complete compliance and satisfaction of all requirements. While there are numerous factors to consider, broadly speaking, important factors for analyzing what exemption might apply include the limitations on the total offering amount, restrictions and rules on solicitation and advertisement of the offering, requirements on disclosure documentation to potential investors, the types of investors involved and limits on the duration of the offering.

Further, even though the offering may be exempt from registration, a notice alerting the SEC to a securities offering may need to be filed. To fall within the safe harbor covering the “private placement” exemption from registration, a form called “Form D – Notice of Exempt Offering of Securities” should be filed with the SEC within 15 days after the first sale. Additionally, securities laws for each investor’s state of residence should be reviewed to ensure compliance and timely filing.

Securities laws are complex and any offering of brewery ownership in exchange for investment may require extensive analysis. It is understandable that a growing company’s leadership may not be able to navigate the complicated rules and regulations of securities law. Seeking the advice of experienced counsel is beneficial to ensuring there are no missteps early on in a brewery’s development that could subject the brewery to penalties or fines or negatively impact the brewery’s appeal to future investors.