News from Moss & Barnett
A Professional Association

Summer 2011

An Overview of Private Placements and Raising Capital

By Anthony M. Marick

Tony Marick is a business attorney and shareholder of Moss & Barnett. He assists clients with securities, mergers and acquisitions, and other complex business matters. Tony has significant experience with private placements and various financing transactions. Tony can be reached at 612.877.5367 or MarickT@moss-barnett.com.

In This Issue

Entrepreneurs and their companies find financing from many sources, including banks, friends and family, and venture capital funds, as well as institutional, private equity, and wealthy individual investors. Financing can be structured as debt or equity (preferred or common stock) or a combination. With the lending environment still challenging, many companies are raising capital through private placements and private equity investments. This article will provide an overview of some of the legal and business considerations of raising capital, primarily focusing on the federal laws and regulations applicable to the offering and sale of securities. While this article uses terms that apply to corporations, the same issues and concepts apply regardless of the type of issuer selling its securities (limited liability company, partnership, etc.).

Preparing for an Offering

In order to present itself to investors in the best possible light, a company should address a number of important issues prior to conducting an offering. Such preparation is not only necessary, but will enhance the company's credibility with sophisticated investors who expect the company to demonstrate that it is ready for investment partners. Among the issues that should be addressed are the following: estimating the size of the offering based upon the company's anticipated need for funds over a certain period of time; identifying potential sources of financing; deciding whether to utilize a selling agent and whether the offering will be structured as a minimum-maximum offering (in which case, no securities are sold until at least the minimum is sold); selecting the type of security to be offered; and determining the rights that investors will have, such as representation on the company's board of directors. Accepting investor funds is the beginning of an ongoing relationship with the investors, and the company must be prepared to meet reasonable investor expectations.

Many investors will expect preferred stock with certain preferences over the common stock issued to the founders of the company, and they may expect certain participation rights with respect to future rounds of financing. Investors may decide whether to invest or not based upon the type of security offered and whether the opportunity presented meets investor expectations. The offering must reflect the risk associated with the company and should be structured to meet the expectations of investors relating to return on investment, preferences, and the like. Companies should obtain legal advice to ensure that the company's articles, bylaws, and other organizational documents properly authorize and describe the securities to be issued, the ongoing rights of the investors, and any rights investors may have to liquidate their investment. As to the offering itself, the company must ensure that it does not violate the applicable securities laws and regulations. If a company sells securities in violation of the securities laws, then the sales are subject to rescission by the investors. Companies, and their officers and directors, can be subject to civil and criminal penalties as well.

Application of the Securities Laws

Sales of securities (whether debt or equity) either must be registered or exempt from registration under the Securities Act of 1933 and applicable state securities laws. The exemptions are designed to allow sales that are limited in dollar amount or number of investors without requiring a registration. It is important to understand

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By Marcy R. Frost

Marcy Frost is a shareholder and the Chair of the employment law practice area. As an MSBA Certified Labor and Employment Law Specialist, Marcy practices employment law with an emphasis on management counseling. She advises clients regarding the numerous questions that arise in connection with compensation and changes in employment status. Marcy also drafts employment policies and employment, independent contractor, confidentiality, non-competition, and separation agreements that maximize her clients' rights and competitive advantage. Marcy can be reached at 612.877.5338 or FrostM@moss-barnett.com.

YOU'RE FIRED—PLEASE SIGN HERE

Employers often attempt to soften the blow of an employment termination by offering the departing employee a severance package. Unless a union contract, company policy, or individual contract requires a severance payment, such offers by employers are completely voluntary. Except in unusual circumstances, employers should condition any severance package on the signing of a full and effective waiver of any potential claims by the employee. Employers often want to keep the documentation "short and simple," but this article explores some of the nuances of separation agreements that may make a more detailed document more appropriate.

The Older Workers Benefit Protection Act ("OWBPA") amended the Age Discrimination in Employment Act ("ADEA") to address the requirements for an effective waiver of ADEA claims. The ADEA applies to employers with 20 or more employees and protects employees 40 years old or older from discrimination based on age. Pursuant to the OWBPA, an employee whose employment termination is based on individual circumstances must be given 21 days in which to review the agreement before signing it. When the termination is part of an "exit incentive" or "termination program," the 21-day review period is increased to 45 days and the employee must be given age-specific demographics concerning the affected work units. In every situation, the employee must be given seven days after signing the agreement to rescind the waiver of the age discrimination claims. Failure to comply with these and other requirements of the OWBPA can result in a nullification of the employee's waiver of ADEA rights.

The Minnesota Human Rights Act ("MHRA") applies to all Minnesota employers regardless of size. In order to effectively waive a claim for discrimination based on race, color, creed, religion, national origin, sex, marital status, disability, sexual orientation, age, or other protected categories under the MHRA, the employee must be given 15 days after signing the agreement to rescind the waiver of the MHRA claims. Where the ADEA is also applicable, the rescission periods run concurrently. This requirement is unique among state human rights laws. Employers and lawyers from outside Minnesota often overlook the rescission requirement, which makes "borrowing" an agreement from outside Minnesota a dangerous shortcut. The 15-day rescission period also raises issues regarding the timing of severance payments. If payments are going to be made according to a regular payroll schedule, the first payment might be required before the rescission period ends. Payments made prior to a rescission are difficult to recover.

The Equal Employment Opportunity Commission ("EEOC") has challenged many common separation agreement provisions. The EEOC has taken the position that a clause in a separation agreement that prohibits the employee from reapplying for employment with the employer may be a form of retaliation. The EEOC also has declared that language in a separation agreement that purports to waive the right to file a charge with the EEOC, continue the processing of such a charge, or participate in an investigation is unenforceable and itself a violation of the law. Employees, however, can waive their right to pursue damage awards in an EEOC proceeding, and a carefully worded separation agreement can accomplish this. The separation agreement does not need to inform employees of their right to pursue an EEOC claim, but it cannot contain any language that suggests that such a right has been waived. Release, covenant-not-to sue, and non-disparagement provisions should be drafted with this EEOC position in mind.

Section 409A of the Internal Revenue Code and the corresponding Treasury Regulations ("409A") have implications for any form of "deferred compensation," which under some circumstances can include post-termination severance agreements. A provision that allows the employer to accelerate the

YOU'RE FIRED—PLEASE SIGN HERE CONTINUES ON PAGE 3

payments would subject the employee to serious tax consequences, even if the acceleration never actually occurs. Unless the agreement provides for all payments to be completed within two and one-half months of the tax year following termination (the next March 15 for most employers), the tax penalties may apply if the termination of employment was voluntary, the amount exceeds a formulaic maximum, the payments extend too far into the future, or continued obligations to the employer are inconsistent with 409A's concept of "separation from service." Although the most serious consequences of 409A fall upon the employee in the form of imputed income, penalties, and interest, employers also face reporting and withholding challenges relating to 409A.

Entire Agreement provisions that are often included in separation agreements as "boilerplate" need to be given careful consideration. Is there an employment agreement or other agreement that requires the employee to keep information confidential or prohibits certain forms of post-employment competition? What about loans or other special agreements with the employee? Sometimes it is to the employer's advantage to state that the separation agreement supersedes any prior agreements, while at other times it is important to make sure that prior agreements are preserved.

Affiliated entities and individuals, such as parent, subsidiary, or sister companies and directors, governors, officers, managers, and co-workers should be included in the release of claims and, if applicable, a non-disparagement clause. Oftentimes agreements include such related entities and individuals within the definition of "Company" or "Employer," but such an expansive definition can lead to problems. An acknowledgment that the employee worked for such a Company or Employer may be interpreted as an admission that the related entities were "joint employers." Also, the inclusion of other entities and individuals as "parties" to the agreement can cause confusion when only the immediate employer is a signatory.

Benefits to the employer other than the release can be obtained, so thought must be given to whether there are other concessions that should be sought. An express agreement to treat business information as confidential often is included where there is sensitive material not covered by any confidentiality agreement. If the severance amount is significant, an employee may be willing to limit post-employment competitive activities. Separation agreements also can include transition or litigation assistance provisions.

Unique circumstances may require special attention in a separation agreement. If the employee is an owner, equity buy-out provisions in a buy-sell agreement may be implicated or a buy-out may be part of the separation package. Employees who serve as officers or directors (or comparable positions in a limited liability company) usually should be required to resign their other positions as part of the severance agreement. Special provisions may need to be included concerning the transition of company vehicles or computers. Certain wage claims cannot be released without public agency participation, so the potential for such claims must be considered. A full analysis of the relationship with the employee is important when structuring a severance package and drafting a separation agreement.

A severance package supported by a well-crafted separation agreement can bring final closure to an employment relationship. A separation agreement that is not tailored to the needs of both the employee and the employer can jeopardize existing rights of the employer or leave the door open for future claims by the employee. If you would like to discuss an appropriate severance offer or need assistance in preparing a separation agreement, contact your attorney at Moss & Barnett.

Various Accolades

Moss & Barnett is Pleased to Recognize the Following Team Members:

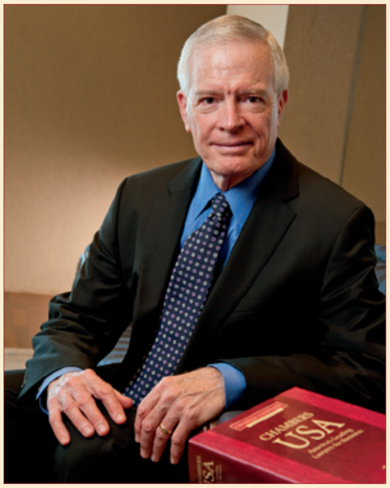
Curt Smith, Chair of our litigation department, was awarded the "Champions Award" by the American Subcontractors Association of Minnesota ("ASA-MN") at its 11th annual awards banquet held on January 27, 2011. This was the inaugural presentation of the "Champions Award." The award was designed to recognize special individual members for their long-term work to enhance the business environment for subcontractors and outstanding contributions to the ASA. Curt is a founding member of the ASA and served on its board of directors. He has presented numerous educational programs and was a key player in the enactment of the Contractors Bill of Rights Act.

Congratulations for your outstanding service to the construction industry, Curt!

Curt Smith

Chuck Parsons, a member of our real estate practice area, was recognized as a "Leader in His Field" for the fifth consecutive year by *Chambers USA*. Chuck was described as "*a dean of real estate law*." His varied practice covers advocating on behalf of owners, developers, buyers, sellers, landlords, lenders, and borrowers. Since 1999, *Chambers USA* has been identifying leading lawyers and law firms throughout the United States and the world by conducting interviews with thousands of lawyers and their clients in an extensive range of practice areas. The research is in-depth and client focused, and the guide is read by industry-leading companies and organizations throughout the United States and worldwide. Chambers publishes an annual directory entitled, "*America's Leading Lawyers for Business: The Client's Guide*."

Congratulations once again, Chuck, on this well-deserved recognition!



Chuck Parsons

Mathew Meyer, a member of our litigation practice area, received two awards for his ongoing work with the Minnesota Committee of the Department of Defense Employer Support of the Guard and Reserve ("ESGR") program on April 4, 2011. First, he was recognized as the Minnesota Volunteer of the Year. In addition, he was presented the national Presidential Service Award. The awards were presented during ESGR's annual meeting by General Craig R. McKinley, the Chief of the National Guard Bureau. ESGR was formed to develop and promote a culture in which all employers support and value the military service of their employees, and it serves as the principal advocate for employers within the Department of Defense. Its mission is to develop and promote employer support for Guard and Reserve service by advocating relevant initiatives, recognizing outstanding support, increasing awareness of applicable laws, and resolving conflicts between employers and service members.

Thank you for your service, Mathew!

Mathew Meyer

Moss & Barnett Teams up with Dave Lee and WCCO Radio for Dave Lee's Gutter Bowl 5

Moss & Barnett was proud to team up with Dave Lee and WCCO Radio for Dave Lee's Gutter Bowl 5, which was held on February 18, 2011. The Dave Lee Gutter Bowl is a bowling tournament to benefit the University of Minnesota Amplatz Children's Hospital and their Adopt-A-Room program. The University of Minnesota Amplatz Children's Hospital is located on the west bank of the Mississippi River in Minneapolis and is affiliated with the University of Minnesota Medical School. The University of Minnesota Amplatz Children's Hospital provides a broad spectrum of pediatric programs and services ranging from pediatric general surgery, imaging, and neonatal and pediatric intensive care, to cardiac and oncology services and blood, marrow, and organ transplantation. To learn more about the University of Minnesota Amplatz Children's Hospital, visit uofmchildrenshospital.org.

Thank you, Dave Lee and WCCO Radio, for your service to our community!

Dave Lee Gutter Bowl 5 (February 18, 2011), Back Row (from left to right): WCCO Radio Producer Steve Enck, WCCO Radio and Minnesota Law Host Steve Thomson, Moss & Barnett CEO and Minnesota Law Host Tom Shroyer; Front Row (from left to right): Moss & Barnett Marketing Coordinator Debbie Weinstock, Moss & Barnett Attorneys Dave Biek and Jana Aune Deach, WCCO Radio Host Dave Lee, Moss & Barnett Attorney Brian Grogan

Did You Know?

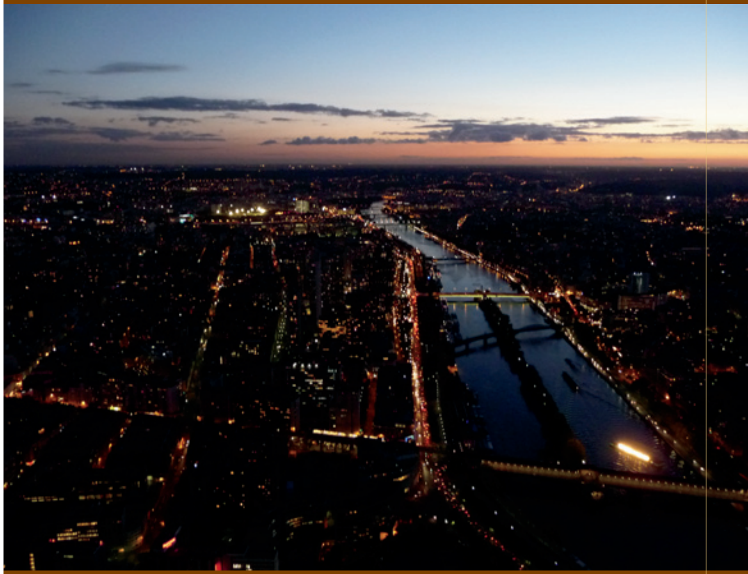
*We are pleased to introduce a brand new feature to our readers – **"Did You Know?"** We will be introducing you to various members of our Moss & Barnett team and highlighting something unique and interesting about them. We hope you enjoy.*

DID YOU KNOW?...

Suzanne Schaefbauer

That a photograph taken by real estate legal assistant Suzanne Schaefbauer during a recent trip to Paris was published in the *Alliance Française de Minneapolis/ St. Paul 2011 Calendar*? After reviewing 135 photos from 25 participants, the Alliance Française 2011 Calendar Committee selected Suzanne's photo to appear on the back cover of its 2011 calendar. Suzanne's photo, entitled "From the Eiffel At Dusk," is reproduced below. It was taken October 25, 2010, as the sun was setting and is a southwestern view (downstream toward Pont de Bir Hakeim et Allée des Cygnes Islet).

Félicitations, Suzanne!



"From the Eiffel at Dusk" by Suzanne Schaefbauer

By Terese A. West

Terese West is a shareholder and member of our banking and commercial transactions and business litigation practice areas. As part of her practice, Terese counsels banks on restructuring commercial loans to maximize available resources of repayment. She can be reached at 612.877.5407 or WestT@moss-barnett.com.

Managing Risk: Personal Guaranties in Commercial Transactions

Commercial lenders routinely require one or more owners or managers of a business to personally guaranty payment of business debt. A personal guaranty is not a substitute for borrower creditworthiness; the business remains the primary source of repayment. The guaranty is a contract separate from the underlying obligation that requires the guarantor to perform only in the event the business defaults. A personal guaranty provides the lender with additional security for the loan. It also ensures that management has as much of a financial stake in the business as the lender.

In Minnesota, to be enforceable, a guaranty must be in writing, be signed by the guarantor, and express the consideration for it (typically the extension of credit). As with most contracts, the devil is in the details. Although Minnesota courts routinely uphold clear and unambiguous guaranties, they will construe drafting ambiguities against the lender.

When evaluating a personal guaranty, either as a lender or a guarantor, the following should be considered:

Is the guaranty one of payment or collection?

Under a guaranty of payment, a default by the borrower triggers the guarantor's obligation to pay. Upon default, the lender may accelerate amounts due and demand payment from the guarantor without first (or ever) attempting to collect against the borrower or enforce any security agreement with respect to collateral.

In contrast, a guaranty of collection obligates the guarantor only to the extent the lender has been unsuccessful at diligent efforts to exhaust other remedies. Such a guaranty tends to invite a dispute over what constitutes "diligent efforts."

What constitutes default on the underlying obligation?

The loan documents should define what constitutes default based on clear, precise contractual duties, such as the failure to make payments when due or the failure to comply with specific loan covenants or reporting obligations. Where the borrower has multiple obligations to the lender, the loan documents may provide that default on any one obligation constitutes default on the guarantied debt. Such a cross-default provision permits the lender to act promptly to protect its interests at the first sign that the borrower is experiencing financial difficulties.

The underlying loan documents may give the borrower the right to cure a default. While the right to cure, when exercised, may protect the guarantor from liability, the loan documents may include a limitation on the number of defaults that may be cured prior to acceleration. Such a provision prevents a borrower from repeatedly defaulting and then curing, driving up the cost to service the loan and effectively preventing the lender from taking steps to enforce the guaranty.

What is the extent of the guaranty?

A guaranty may be limited to a single debt or a specific amount or may be unlimited. A guaranty may extend to all the borrower's indebtedness to the lender, whether then existing or incurred at some time in the future. The lender may require that the guaranty extend to any extension, renewal, or replacement

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of the debt. Such a requirement, coupled with an absolute and unconditional payment guaranty, frees the lender to restructure the debt without compromising its ability to enforce the guaranty.

How long is the guaranty enforceable?

Minnesota courts will limit enforcement of a guaranty of indefinite duration to a reasonable amount of time, unless the guaranty permits the guarantor to revoke his or her guaranty prospectively. In that case, the guaranty remains in force indefinitely unless and until the guarantor exercises that right. The lender may structure the loan documents to provide that revocation by a guarantor constitutes default. In that case, upon revocation, the lender is positioned to reevaluate the credit and, at its option, take steps to enforce the guaranty.

How does enforcement work among multiple guarantors?

One or more individuals or entities may guaranty the same debt. A guarantor who pays more than his or her fair share of the debt has an equitable right of contribution from co-guarantors under Minnesota law. If the guarantors agreed to be jointly and severally liable for the debt, the lender can avoid becoming embroiled in contribution disputes among co-guarantors. Joint and several liability also permits the lender to target its collection efforts against the guarantor or guarantors with the greatest ability to pay.

Does the guarantor have any defenses to enforcement of the guaranty?

Unless otherwise agreed, a guarantor may raise any defense that the borrower has to payment of the underlying obligation, except for incapacity and bankruptcy. The guarantor also may defend against enforcement of his or her guaranty on the grounds that the lender has acted or failed to act without the guarantor's consent, such as released collateral, failed to enforce a security interest in collateral, or changed payment terms, thereby materially increasing the guarantor's risk.

However, a guarantor can, and often does, bargain away his or her defenses to induce the lender to extend credit. Minnesota courts routinely uphold waivers of all guarantor defenses except for actual payment. A comprehensive waiver frees the lender to restructure the debt without notice to or consent by the guarantor, even to the extent of releasing co-guarantors from liability.

Who pays for legal expenses?

Minnesota law generally requires each party to a dispute to bear its own legal expenses, unless otherwise agreed or authorized under statute. An unlimited guaranty may obligate the guarantor to reimburse the lender for attorney fees and other costs of collection incurred to collect amounts due, as long as such fees and costs are reasonable and the loan documents provide for it.

The risk inherent in any loan transaction varies depending on the circumstances. An attorney can help structure a guaranty to meet the parties' needs.

the various exemptions available under the federal and state securities laws and how they relate to one another in order to avoid unintentional violations. Each state where an investor resides (or where an investment entity is organized) must be checked to determine if a state exemption is available. There are a number of federal exemptions, including Securities and Exchange Commission ("SEC") Regulation A and Section 4(6), but the primary exemption upon which companies most often rely is SEC Regulation D (Rules 501 through 506).

A. Regulation D. Rules 501-503 of Regulation D establish certain conditions for the exemptions, and Rules 504-506 are the three exemptions under Regulation D. Each of these exemptions have different requirements and vary with regard to: (i) the maximum dollar amount that may be sold in the offering; (ii) the maximum number of investors to whom the securities may be sold; (iii) the information required to be provided to potential investors; and (iv) the types of investors to whom the securities may be sold. The following is only a summary of these exemptions, as there are detailed requirements beyond the scope of this article.

1. <u>Definition of "Accredited Investor."</u> The term "accredited investor" is a key concept under Regulation D. The most important categories of accredited investors include: (i) directors, executive officers, and general partners of the issuer of the securities; (ii) any natural person whose individual net worth (or joint net worth with that person's spouse) at the time of purchase exceeds $1,000,000 (since 2010, an investor's primary residence cannot be counted for purposes of the net worth calculation); (iii) any natural person who had an individual income in excess of $200,000 (or joint income with that person's spouse in excess of $300,000) in each of the two most recent years and who reasonably expects to meet these income tests in the current year; (iv) any corporation, not formed for the purpose of acquiring the securities offered, with total assets in excess of $5,000,000; and (v) any entity in which all of the equity owners are accredited investors. There are additional categories of accredited investors, including certain institutional investors and certain organizations and trusts with total assets in excess of $5,000,000. The company is required to determine whether a subscriber is an "accredited investor." This typically is done through the use of a questionnaire seeking information that will establish the facts and representations upon which the determination is based.

2. <u>Rule 504 – Offerings of Up to $1,000,000.</u> Rule 504 allows the sale of securities in an aggregate maximum dollar amount of $1,000,000. Rule 504 may be used with an unlimited number of investors; no distinction is made between accredited and non-accredited investors under Rule 504.

3. <u>Rule 505 – Offerings of Up to $5,000,000.</u> Rule 505 permits aggregate sales of up to $5,000,000. Under Rule 505, sales may be made to up to 35 purchasers who are not accredited investors and to an unlimited number of accredited investors.

4. <u>Rule 506 – Offerings Unlimited As to Dollar Amount.</u> Rule 506 does not impose a limit on the dollar amount of an offering. Sales may be made to up to 35 purchasers who are not accredited investors and to an unlimited number of accredited investors. Any purchaser who is not an accredited investor must be "qualified." This "qualification" is based on the company's "reasonable belief" that immediately prior to the sale such purchaser (either alone or with a purchaser representative) has such knowledge and experience in financial and business matters that he or she is able to evaluate the merits and risks of the prospective investment. The usual procedure for establishing such reasonable belief is to incorporate in a subscription agreement a representation by potential purchasers that they have such knowledge and experience. Federal law provides that offerings made under Rule 506 are exempt from regulation by the states, except for notice and filing fee requirements.

5. <u>Information Required to be Furnished to Investors – The Private Placement Memorandum.</u> If sales are made pursuant to Rule 504, or only to accredited investors under Rule 505 or 506, then there are no specific requirements with regard to information to be furnished to investors. Use of a thorough Private Placement Memorandum, however, is always prudent. Even if no disclosure document is technically required, offers and sales made under these exemptions are still subject to the antifraud provisions of the securities laws. To provide investors with the opportunity to make an informed decision, and to

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document the adequacy of the information provided by the company, thorough disclosure is always beneficial. The primary offering document is typically called a "Private Placement Memorandum" and includes the following: a summary of the terms of the offering; a description of the risk factors related to the investment and the company's business; a description of the company's intended use of the proceeds from the offering; a description of the company's capitalization before and after the offering; a description of the company's business, including its products and services, markets, and competition; the identification and business background of management; a listing of the ownership interests for the company's officers, directors, and other principal owners; a description of any "related party" transactions; a description of the securities being offered, including any restrictions on the transferability of the securities; and the intended plan of distribution, including identity of any underwriter or selling agent and such organization's compensation for its services in connection with the offering.

6. Financial Statement Disclosure. In addition to the above business disclosures, financial statement disclosure may be required. For offerings up to $2,000,000, Regulation D requires that the company provide financial statements to any non-accredited investor consisting of a balance sheet as of the end of the most recent fiscal year and statements of income, cash flow, and shareholders' equity for each of the two most recent fiscal years (or for such shorter time as the company has been in business). If the company's fiscal year ended more than 120 days prior to the commencement of the offering, a balance sheet as of the end of the most recent interim period and income statements for the period ending on the date of the balance sheet and the comparable period of the preceding fiscal year must be provided. If a company cannot obtain audited statements without unreasonable effort or expense, then only the balance sheet, which must be dated within 120 days before the start of the offering, must be audited. For offerings between $2,000,000 and $7,500,000, all of the financial statements must be audited. For offerings over $7,500,000, the audited financial statements must contain balance sheets for the last two years and income statements for the last three fiscal years.

7. Limitations on Manner of Offering. Rule 505 and 506 of Regulation D do not allow general solicitation or advertising. General solicitation or advertising includes any advertisement, article, notice, or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio and any seminar or meeting whose attendees have been invited by any such general solicitation or advertising. Although SEC Rule 504 does not prohibit general solicitation, many state exemptions prohibit general solicitation regardless of the size of the offering. For example, Minnesota's companion exemption to Regulation D, Minn. Stat. § 80A.46(14), prohibits general solicitation or advertising without regard to the size of the offering. Companies are responsible for the acts of their agents as well, so companies should obtain advice about using a selling agent. There are licensed brokers/dealers that assist with private offerings, as well as unlicensed "finders." The law involving finders is evolving, and Minnesota now requires agents who are not licensed broker/dealers and who are providing introductions as part of an offering to make a filing about their role in an offering with the Department of Commerce. Companies should be particularly careful about using an unlicensed selling agent, as the scope of their services and compensation requires careful legal analysis.

B. Form D Filing with the SEC Regulation D requires that a company file a Notice of Sales on Form D no later than 15 days following the first sale of its securities. The Form D is now required to be filed electronically, which necessitates that the company obtain filing codes for the SEC's electronic filing system, EDGAR. Many states require notice filings as well.

Conclusion

Although this article provides an overview of major issues relevant to a private offering, the securities laws are complex and require careful planning and attention. There are other issues not addressed herein (such as the limitations on resale that apply to restricted securities and the risk of integration with other offerings). Companies are encouraged to seek advice early, as proper planning will not only avoid the severe penalties associated with securities violations, but also will ensure that a company is positioned to raise capital when it needs to do so without having complications arising from prior sales.

PROFESSIONAL

Excellence + Teamwork

Moss & Barnett's MSBA Certified Legal Specialists

Moss & Barnett is pleased to announce that **Marcy Frost** and **Dave Jendrzejek** recently were certified as Labor and Employment Law Specialists by the Minnesota State Bar Association ("MSBA"). Dave also is certified as a Civil Trial Law Specialist and is one of only four attorneys in Minnesota to be certified in two areas of law. Marcy and Dave join the ranks of our other Certified Specialists, **Tom Sheran** and **Tom Shroyer**, who are certified as Civil Trial Law Specialists, and **Glen Schumann**, who is certified as a Real Property Law Specialist. Tom Sheran and Tom Shroyer have been Certified Specialists for over 20 years. The MSBA has been approved as an independent professional organization for certifying lawyers as Specialists in four specialty areas: Civil Trial Law, Criminal Law, Real Property Law, and, just recently, Labor and Employment Law. Only lawyers who successfully complete the application process and continue to meet all program standards may call themselves "MSBA Certified Legal Specialists." To learn more about the MSBA Legal Specialist Certification Program, visit mnbar.org/certify. Also be sure to tune in to *MINNESOTA LAW, Presented by Moss & Barnett*, on Saturday, August 20, 2011, at 11 AM (WCCO 830AM), when we will be featuring representatives of the MSBA Legal Specialist Certification Program.

(From left to right): Dave Jendrzejek, Marcy Frost, Glen Schumann, Tom Shroyer, and Tom Sheran

Two New Attorneys Have Joined the Team

Shanna L. Strowbridge has joined our real estate practice area. Shanna's legal practice focuses on commercial real estate, retail and office leasing, and general corporate law. Shanna has represented a wide variety of tenants in the negotiation of office and retail leases and has worked with local and national developers in land acquisitions, sales, and structuring of master planned communities. Her corporate law experience includes advising clients on financing agreements, business structuring, and management matters. Shanna received her law degree, *cum laude*, from the University of Minnesota Law School, and her B.A., *summa cum laude*, in History/English from the University of Minnesota. Prior to joining Moss & Barnett, Shanna was a shareholder at a local law firm and served as in-house counsel for a real estate developer and property management company.

Shanna Strowbridge and Taylor Tarvestad-Sztainer

Taylor D. Tarvestad-Sztainer has joined our litigation practice area. She assists business and individual clients with a variety of litigation matters, including employment, construction, real estate, business, and environmental disputes. Taylor received her law degree from William Mitchell College of Law, *cum laude*, and her B.A., *summa cum laude*, with distinction, in Sociology, from the University of Minnesota. Prior to joining Moss & Barnett, Taylor completed a clerkship with a judge in the Tenth Judicial District in Washington County, Minnesota, and, while in law school, she served as research assistant to two William Mitchell College of Law professors. While at the University of Minnesota, Taylor's undergraduate honors thesis was recognized as the "Best Undergraduate Honors Thesis."

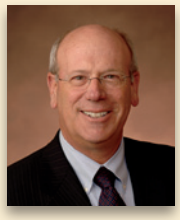
PROFESSIONAL Excellence + Teamwork

Moss & Barnett Congratulates its Attorneys Listed in 2011 *Super Lawyers* and *Rising Stars*

Moss & Barnett is pleased to congratulate its attorneys who were listed in 2011 Super Lawyers and Rising Stars.

MINNESOTA SUPER LAWYERS 2011

- **Michael J. Bradley** – *Utilities*
- **Kevin M. Busch** – *Banking*
- **Mitchell H. Cox** – *Business/Corporate*
- **Jana Aune Deach** – *Family Law*
- **Peter A. Koller** – *Business Litigation*
- **Joseph G. Maternowski** – *Environmental*
- **Charles A. Parsons, Jr.** – *Real Estate*
- **Susan C. Rhode*** – *Family Law*
- **James A. Rubenstein** – *Bankruptcy & Creditor/Debtor Rights*
- **Dave F. Senger** – *Business/Corporate*
- **Thomas J. Shroyer** – *Business Litigation*
- **Jeffrey L. Watson** – *Real Estate*
- **Cass S. Weil** – *Bankruptcy & Creditor/Debtor Rights*
- **Edward L. Winer*** – *Family Law*


Michael J. Bradley

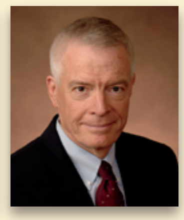

Kevin M. Busch


Mitchell H. Cox

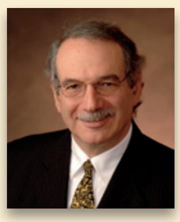

Jana Aune Deach


Peter A. Koller


Joseph G. Maternowski


Charles A. Parsons, Jr.


Susan C. Rhode


James A. Rubenstein


Dave F. Senger


Thomas J. Shroyer


Jeffrey L. Watson


Cass S. Weil


Edward L. Winer

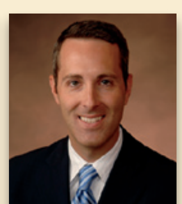
*Special congratulations to **Susan Rhode**, who is also included in the "Top 100" and "Top 50 Women" *Super Lawyers* for 2011, and to **Ed Winer**, who is also included in the "Top 100" *Super Lawyers* for 2011.

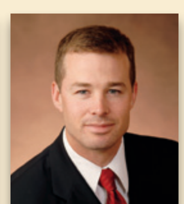
Super Lawyers is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high-degree of peer recognition and professional achievement. Peer nominations and evaluations are combined with third-party research, and selections are made on an annual, state-by-state basis. Designation as a *Super Lawyer* is awarded annually to only 5% of the licensed active lawyers in Minnesota.

MINNESOTA RISING STARS 2011

- **Shannon M. Bixby** – *Family Law*
- **Timothy L. Gustin** – *Real Estate*
- **Matthew P. Kostolnik** – *Business Litigation*
- **James J. Vedder** – *Family Law*


Shannon M. Bixby


Timothy L. Gustin


Matthew P. Kostolnik


James J. Vedder

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Minnesota Law
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Saturdays at 11 AM on WCCO 830AM

On May 14, 2011, *MINNESOTA LAW* moved to its new 11 AM time slot. The show, which debuted on May 3, 2008, is a one-hour program focusing on interesting legal facts and important new developments in the law and features a different Moss & Barnett attorney and topic each week. *MINNESOTA LAW* shows this winter and spring featured Moss & Barnett attorney Kim Bonuomo on “Can You Handle the Truth? Legal Services for Our Armed Forces” (February 12, 2011), Chief Justice Lorie Gildea on the “State of Minnesota Courts” (April 9, 2011), Moss & Barnett attorney Terese West on “On the Hook: The Law of Personal Guaranties” (April 16, 2011), Moss & Barnett attorney Tony Marick on “Closing the Deal: Buying and Selling A Business” (April 30, 2011), and Robert Stein, Everett Fraser Professor of Law at the University of Minnesota Law School, on the “Uniform Law Commission” (June 11, 2011). Our upcoming programming this summer will feature Moss & Barnett attorney Marcy Frost on the “The Fair Labor Standards Act” (July 30, 2011) and representatives of the MSBA Legal Certification Program on “Certified Legal Specialists” (August 20, 2011), in addition to many of our other Moss & Barnett attorneys on a variety of topics. To learn more about our upcoming programs and to listen to any of our past broadcasts, visit our web site at moss-barnett.com and click on the *MINNESOTA LAW* icon. You can also follow us on Twitter @MinnLaw.

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