

## Introduction

Compliance with registration requirements of each state is time-consuming and expensive, enough so that in some instances it deters capital-raising efforts entirely. The legal avenues by which firms can raise capital but avoid state registration are thus critical to capital-raising efforts.

From their inception, states' blue sky laws attempted to clear the way for secondary trading and help facilitate certain small-business capital-raising efforts. But variations among state laws persisted, which resulted in recurrent, loud calls for preemption of these state regimes entirely. Beginning in 1996, the federal government and the U.S. Securities and Exchange Commission further and further displaced and preempted those state registration requirements. Today, if an offering qualifies for an exemption from federal registration efforts, it likely qualifies for an exemption under state law as well.

While the state securities registration requirements have been largely displaced by a patchwork of federal law, state blue sky laws are continuing to evolve special protections for society's most vulnerable members. For instance, as covered in prior updates to this treatise, the states like Indiana and Utah have begun to develop a system of rewards and protections for those who report potential securities law violations to state securities regulators. And the North American Securities Administrators Association proposed model legislation for additional states to follow suit. This update covers two new efforts by states to broaden the protective reach of the blue sky laws: a system of special incentives and protections under the securities laws for vulnerable investors, and special administrative funds to assist victims of securities fraud in obtaining restitution. As Chapter 8 of this update explains, the blue sky laws pay special attention to seniors and persons under states' protective services, and states are increasingly adopting "report and hold" legislation to protect these persons. Similarly, as Chapter 11 discusses, a handful of states, like Indiana, Kansas, and Vermont, have adopted legislation implementing special assistance funds for victims of securities fraud. Recently, the North American Securities Administrators Association put forth a legislative template other states can use to craft their own special assistance funds. These developments, and more, are discussed in this updated version of Blue Sky Law.

This update contains new and revised sections on federal and state treatment of M&A brokers (§ 8:35), special state regulation of proxy advisors (new § 8:170), special state regulation of the use of emerging technologies (new § 8:171), civil penalties (§ 11:78), manner and method of reporting for the purposes of whistleblower award eligibility (§ 11:88), the issue of retaliatory intent whistleblower protections (§ 11:94), and right to jury trial (new § 11:98).