

(1) Warning to Individual Investors;

(2) Entrepreneurs - Typical Stages of Financing;

(3) Entrepreneurs - Grant and Loan Programs Available; and

(4) Entrepreneurs - Securities Law Warning.

Posted by Ron A. Rhoades on July 27, 2008

(1) A WORD OF CAUTION TO INVESTORS, ABOUT INVESTING IN ALTERNATIVE ENERGY PROJECTS.

If you are thinking about investing in any project, I do encourage that you receive legal, tax and/or investment advice first, in order that you don't end up sending your money away to some highly speculative, or worse, fraudulent investment scheme.

While I am not aware of any fraud going on right now on the PickensPlan site, neither have I reviewed every solicitation for funds. Fraudsters abound on the internet with fake investment schemes, and I would not be surprised if they end up on this site eventually.

I STRONGLY URGE members of the PickensPlan to NOT send your cash or checks (or credit cards or wire transfers, etc.), in any amount - even small amounts - without checking out the investment being offered (or "product" being offered) thoroughly. Remember - if the investment opportunity sounds too good to be true, it probably is not true.

Furthermore, any investment in the stock of any company, LLC, partnership, or business "trust" by any investor should be made should be undertaken only after a thorough review of the prospectus or, in the case of private offerings, the private placement memorandum. Legal, tax and/or financial counsel is highly advisable. I urge you to consult with an attorney in your area before sending your funds off to anyone. (I do not provide legal counsel in this area, so please do not contact me.)

Should you desire to invest smaller amounts, there are many existing mutual funds and exchange-traded funds (ETFs) which invest in established companies, and some of these funds and ETFs target the alternative energy sector. I would encourage you to look for low-cost, no-load (and no 12b-1 fee) mutual funds and ETFs. Morningstar.com can be utilized as one resource to discern information about funds and ETFs, and others should be considered. Mutual funds and ETFs can be utilized to diversify, thereby reducing certain types of risks.

Individual investors can consider direct investment in publicly traded alternative energy companies, with adequate research. While identifying reasonably priced stock in individual companies with great potential may - possibly - lead to significant long-term rewards, you also need to realize that there are also greater risks when investments are made in individual companies. In fact, many investment advisers would consider investments in individual company stock to be "speculative" in many instances. One resource about generally larger companies in the "green" arena can be found in a recent U.S. News and World Report article, "The Outlook for Investing in Green Energy: How to deal with a sector that has pop—and could go pop, too," found at <http://www.usnews.com/articles/business/economy/2008/07/23/the-outlook-for-investing-in-green-energy.html?PageNr=1>

Finally, never put all of your investments "in one basket." Any prudent investment portfolio will have a range of investments in many different industries, and in several different asset classes (such as U.S. stocks, international stocks, high-quality fixed income investments, etc.). Do NOT bet all of your retirement funds on speculative bets on a few stocks, or one sector of the economy. The recent experience the stock market has had in the financial services sector, with many banking and investment bank stocks falling in price 50% to 90% over the course of a single year, serves as a reminder of the need to diversify. While I encourage those who desire to invest in alternative energy to do so, it should be done prudently, and certainly you should not put your "retirement nest egg" at risk by investing it all in one sector of the economy.

(2) FINANCING SOURCES - AND - SECURITIES LAW OVERVIEW FOR THOSE SEEKING TO FORM COMPANIES AND/OR TRUSTS AND/OR PARTNERSHIPS TO RAISE FUNDS.

If you are interested in getting together with others to form a business entity (of any time) to invest in alternative energy projects, or to form an "investment company" to invest in other companies, please take a moment to review this information.

There are various stages of financing for firms as they evolve and grow. Traditionally, these stages of financing are set forth as follows:

Seed or Concept stage financing: The venture is still in the idea formation stage and its product or service is not fully developed. The usually lone founder/inventor is given a small amount of capital to come up with a working prototype. Monies may also be spent on marketing research, patent application, incorporation, and legal structuring for investors. It's rare for a venture capital firm to fund this stage. In most cases, the money must come from the founder's own pocket, from the "3 Fs" (Family, Friends, and Fools), and occasionally from angel investors. Usually the 3 Fs provide financing up to a few hundred thousand dollars.

An angel investor or angel is an affluent individual who provides capital for a business start-up, usually in exchange for convertible debt or ownership equity. A small but increasing number of angel investors organize themselves into angel groups or angel networks to share research and pool their investment capital. Angel investors usually provide financing for amounts which are less than the amount provide by venture capital firms. Investments often range from \$500,000 to \$1,000,000. It is hard to find angel investors, especially if you do not own a patent or you are not "up and running" - i.e., have an operational history. But a few altruistic ultra-affluent individuals might consider investments in the renewable energy area.

Startup financing, or Series A Round of Investment: The venture at this point has at least one principal working full time. The search is on for the other key management team members and work is being done on testing and finalizing the prototype for production or launch of version 1.0. Early stage venture capitalists--who are as rare as hen's teeth--may fund this stage. But more likely, it will be sophisticated angel investors.

First -stage financing, or Series B round: The venture has finally launched and achieved initial traction. Sales are trending upwards. .A management team is in place along with employees. The funding from this stage is used to fuel sales, reach the breakeven point, increase productivity, cut unit costs, as well as build the corporate infrastructure and distribution system. At this point the company is two to three years old. It's at this stage that venture capitalists prefer to get involved.

Second -stage financing, or Series C round: Sales at this point are starting to snowball. The company is also rapidly accumulating accounts receivable and inventory. Capital from this stage is used for funding expansion in all its forms from meeting increasing marketing expenses to entering new markets to financing rapidly increasing accounts receivable. Venture capital firms specializing in later stage funding enter the picture at this point.

Third stage financing: At this stage the future is so bright the founders "gotta wear shades" to borrow a phrase from the old pop tune. Everything looks good. Sales are climbing. Customers are happy. The second level of managers is in place. Money from this financing is used for increasing plant capacity (or other capacity depending on the nature of the business), marketing, working capital, and product improvement or expansion.

Mezzanine or Bridge financing: At this point the company is a proven winner and investment bankers have agreed to take it public within 6 months. Mezzanine or bridge financing is a short term form of financing used to prepare a company for its IPO. This includes cleaning up the balance sheet to remove debt that may have accumulated, buy out early investors and founders deemed not strong enough to run a public company, and pay for various other costs stemming from going public. The funding may come from a venture capital firm or bridge financing specialist. They are usually paid back from the proceeds of the IPO.

Not All Firms Grow the Same. Some firms only do Series A and B, then are acquired or go to IPO. Other firms have a distinct series D round, and possibly even further rounds, before entering a mezzanine round.

(3) GRANTS, LOW-INTEREST LOANS, AND OTHER GOVERNMENT INCENTIVES FOR ENTREPRENEURS AND CO-OPS.

Don't ignore, however, financing available from the federal government or the states. Small business grants are closer than you think. In fact, the small business grant you need to start or expand your business may be available right in your own home state.

US SBA Loan Guarantees. SBA loan programs lend to small businesses unable to secure financing on reasonable terms through normal lending channels. The loan programs are operated through private-sector lenders that provide loans which are, in turn, guaranteed by the the U.S. Small Business Administration (SBA) -- the SBA has no funds for direct lending or grants. Most private lenders (banks, credit unions, etc.) are familiar with SBA loan programs so interested applicants should contact their local lender for further information and assistance in the SBA loan application process.

EERE Programs. Of broad interest are incentive programs from the U.S. Office of Energy Efficiency and Renewable Energy (EERE) works with business, industry, universities, and others to increase the use of renewable energy and energy efficiency technologies. One way EERE encourages the growth of these technologies is by offering financial assistance opportunities for their development and demonstration. In fiscal year 2007 alone, EERE awarded \$574 million in financial assistance. Check out the federal government's web site on grants, www.grants.gov. Sometimes agencies work together; for example, deployment of renewable energy solutions on tribal lands is supported - see <http://www.eere.energy.gov/tribalenergy/>.

USDA Program for Farmers and Ranchers. There is a USDA program designed to help ranchers and farmers deploy renewable energy. Other federal agencies have programs, as well.

Check with Your State, Local Government, and Utility For Assistance Programs. You might also check out your state Department of Commerce, and other departments, for possible assistance programs they may offer. A comprehensive database of state programs can be found at <http://www.dsireusa.org/> - the web site for DSIRE, "a comprehensive source of information on state, local, utility, and federal incentives that promote renewable energy and energy efficiency."

Federal and State Tax Incentives. Be aware that many states offer end-users various tax incentives (deductions, exemptions from tax, or credits). You should become thoroughly familiar with the tax policy in the states you intend to operate, as this may affect the economic viability of your project. Play close attention, as well, to federal tax law - incentive tax credits for solar energy, production tax credits for wind energy, and other tax incentives which may exist from time to time.

Information from Suppliers Might Be Available. (In response to an inquiry from a North Dakota investor, I replied as follows ...) "Also note that DMI, the fourth largest producer of wind towers in North America, and LM Glasfiber (a Danish company that supplies wind turbine blades), both have offices in North Dakota. You might want to see if they have any insights they can offer you, as chances

are they've dealt with these issues in the past. Some wind turbine installers have very good knowledge about possible state grants and other incentive programs, and may even assist you in filing for a grant."

University Programs. Universities may have programs studying wind, solar or other forms of renewable energy, and may even team up with the state to offer guidance to entrepreneurs.

Learn More By Attending Industry Conferences. A Possible Conference for Entrepreneurs to Attend: National Renewable Energy Marketing Conference. October 26-29, 2008 | Denver, CO. "For over a decade, the National Renewable Energy Marketing Conference has been the industry's paramount annual gathering attended by leading renewable energy and green power industry stakeholders. Each year the most influential key players, including power marketers, renewable energy developers, retail and wholesale green power suppliers, electric utilities, equipment manufacturers, government agencies, energy consultants and nonprofit experts gather to listen to their peers present on the major issues facing the industry." Note that you can download copies of the presentations from prior year conferences at <http://www.eere.energy.gov/greenpower/conference/pastconf.html>

(4) SECURITIES LAW WARNING TO ANYONE SEEKING TO RAISE FUNDS FROM OTHERS.

I've grown concerned that some groups are forging ahead to solicit capital from investors without seeking, in advance, qualified legal counsel in the securities law area. I'm not a '33 Securities Act attorney, but I have attempted to summarize the law. I highly recommend that an experienced securities law attorney be consulted BEFORE you solicit funds from investors (or otherwise "promote" your plan of action in any way).

There appear to be many well-intentioned people seeking investors on this site. However, unfortunately, some of these may have not received proper legal advice on how to comply with securities laws, and the substantial restrictions which exist on "solicitation." Compliance with both federal and state securities laws, even in the context of "private placements," can be costly and time-consuming. The securities laws require a great deal of disclosures, and are designed to deter fraud and inform investors before they part with their funds. They arose nearly a century ago out of an era of speculation when, it was said, schemes abounded to "sell someone the blue sky."

A disclaimer, and a word of caution ... this document is not legal advice, and is intended solely for information and educational purposes. If you are contemplating a private placement, or any legal transaction, you should consult an attorney who can provide you with the advice that you need, for your specific circumstances. Securities law, and corporate finance, is not the area for novices to play. Incorrect documentation can have serious ramifications for all involved parties.

Non-Profit Entities Do Not Issue Stock and Don't Distribute Profits. If you are forming a non-profit entity, you do not have shareholders, just "members." You will likely desire the non-profit entity - if it has a charitable purpose - to register with the IRS as a 501(c)(3) corporation. This permits contributions to the charity to be potentially tax deductible. A CPA or attorney experienced in this area can assist. Documents for forming the non-profit entity, and doing the 501(c)(3) application, can cost several thousand dollars or more. But, as long as you are only seeking "contributions" - not "investments" - you are not issuing securities, and not subject to securities laws.

Securities Law Requirements Apply to All For-Profit Entities. If, however, you desire to form a "for-profit" business entity (of any type - corporation, LLC, partnership, business trust, etc.), then both federal and state securities laws apply. Why? As stated by the Legal Information Institute at Cornell University: "Securities law exists because of unique informational needs of investors. Securities are not inherently valuable; their worth comes only from the claims they entitle their owner to make upon the assets and earnings of the issuer or the voting power that accompanies such claims. The value of securities depends on the issuer's financial condition, products and markets, management, and the competitive and regulatory climate. Securities laws and regulations aim at ensuring that investors receive accurate and necessary information regarding the type and value of the interest under consideration for purchase."

The two main statutes involved in the Federal Securities laws are the Securities Act of 1933 and the Securities Exchange Act of 1934. Generally speaking, the '33 Act governs the issuance of securities by companies, and the '34 Act governs the trading, purchase and sale of those securities. Each has a wealth of regulations promulgated by the Securities and Exchange Commission, as well as regulations adopted by the National Association of Securities Dealers, Inc. and the various stock exchanges.

Under the '33 Act, there can be either "public offerings" of securities (which requires registration with the SEC - a highly expensive and often long process), or exemptions from registration that involve "private placements."

Small Business Issuer, Generally. Many small businesses can reduce the time and cost of corporate securities law compliance (i.e., avoiding the very long and expensive process of a "full registration" with the SEC) by qualifying for "small business issuer" status. Regulation S-B, the source of disclosure requirements for "small business issuer" filings under the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act") defines "small business issuer" as:

1. a U.S. or Canadian issuer of equity or debt securities;
2. that has annual revenues of less than US\$25,000,000;
3. that is not an investment company or an issuer of asset-backed securities;

4. that does not have a “public float” that is equal to or greater than US\$25,000,000 (A company’s “public float” is the aggregate market value of its outstanding voting and non-voting common equity held by non-affiliates); and

5. if a majority owned subsidiary, whose parent company also meets all of the above criteria.

Companies that fit under the “small business issuer” definition can take advantage of the U.S. Securities and Exchange Commission (the “SEC”) small business disclosure system. The benefit of the small business disclosure system is a decreased disclosure obligation. This usually means that less time, effort, and money is spent on securities regulation law compliance.

Small Business Offerings Under Reg S-B. Companies that qualify as “small business issuers” can take advantage of the reduced disclosure regime of Regulation S-B. Securities can be offered and sold publicly by filing Securities Act registration statement Form SB-2. Small business issuers that would like to have their securities publicly traded over the counter can file Exchange Act registration statement Form 10-SB and request quotation on the Over the Counter Bulletin Board (OTCBB). Annual and quarterly Exchange Act reporting requirements can be met by filing annual report Form 10-KSB and quarterly report Form 10-QSB. While OTCBB quotation rules require that quoted companies file quarterly and annual reports, companies can be quoted on the Pink Sheets without meeting Registration Act requirements.

Given all of the requirements, which are still numerous, and which still require a great deal of disclosures (similar to that which would be found in a prospectus for a large business public offering), it is still costly to do a public offering. Expect to spend tens of thousands of dollars in legal and CPA fees, before launching a small business public offering, and additional legal / compliance costs will occur each year.

Staging an initial public offering IPO, even for a "small business issuer," is a very time-consuming and expensive process. Even a small business interested in going public must apply to the Securities and Exchange Commission (SEC) for permission to sell stock to the public. The SB-2 Registration Statement was adopted specifically to help small business. The principal advantages over the other full registration statements required by the SEC is that SB-2 Registration Statements require less specific disclosure and may be filed in the SEC regional offices (and processed by examiners who may be more sensitive to local conditions). Therefore if a "small business" wants to sell a stock offering and is not already public, this type of registration is preferable to full registration because both the time and cost should be less than for a full registration. Many of the requirements for an SB-2 Registration Statement are the same as for a full registration. A reasonable estimate of the fees and costs of an SB-2 Registration Statement (including legal and accounting fees, registration fees, printing costs, etc., but not including underwriting fees, if any) is \$80,000 to \$150,000, more or less. Anticipate about 3-5 months time to go this route.

Another Alternative: The Reg A Filing. Another alternative is a Regulation A filing, are made pursuant to the Section 3(b) exemption from registration under the 1933 Act. A notification including an offering circular (similar to a prospectus) is filed in the home office of the SEC for offerings of up to \$5,000,000. If submitted to the SEC prior to the time of first use, Regulation A now allows an issuer to distribute a "freely written" document generally (so long as it does not make offers, the issuer does not accept money, and certain required information is provided) in order to "test the waters" for indications of interest in the formal offering to come. This information may be published in print or broadcast. After its use, however, certain time periods are delineated during which sales cannot be made (i.e. a "cooling off" period is prescribed). Generally, with a Regulation A filing the process appears to involve the same type of legal work as is involved in an SB-2 filing. Regulation A permits the issuance of tradable stock and thus the existence of an aftermarket. The time and legal costs for a Reg A offering probably would be less than for an SB-2, i.e., a minimum of three months and \$50,000 to \$120,000 in legal and accounting fees, printing fees, etc. (again, not counting underwriting fees).

Private Placements. To avoid the entire process of public offerings, many small businesses don't solicit capital publicly, but rather from "private" sources, through "private placements." The term "private placement" as used in this text refers to the offer and sale of any security by a brokerage firm not involving a public offering. Private offerings are not the subject of a registration statement filed with the SEC under the 1933 Act. Private placements are done in reliance upon Sections 3(b) or 4(2) of the 1933 Act as construed or under Regulation D as promulgated by the SEC, or both. Regulation D, promulgated in 1982, sets forth certain guidelines for compliance with the Private Offering Exemption.

Private placements are generally done under Reg D, and three types of offerings exist under Reg D: those under Rule 504, 505, or 506. Most private placements are done under Rule 506.

Note that under all of these exemptions advertisements, articles, notices or any other communications (including posts on web sites, discussion forums) cannot be published in any newspaper, magazine, newsletter or similar media or broadcast on TV, radio or cable. This is because the placement of securities is "private" (i.e., to known acquaintances), not public.

Rule 504 applies to transactions in which no more than \$1,000,000 of securities are sold in any consecutive twelve-month period. Rule 504 imposes no ceiling on the number of investors, permits the payment of commissions, and imposes no restrictions on the manner of offering or resale of securities. Further, Rule 504 does not prescribe specific disclosure requirements. Generally, the intent of Rule 504 is to shift the obligation of regulating very small offerings to state "Blue Sky" administrators, though the offerings continue to be subject to federal anti-fraud provisions and civil liability provisions of the Exchange Act.

Rule 505 applies to transactions in which not more than \$5,000,000 of securities is sold in any consecutive twelve-month period. Sales to thirty-five "non-accredited" investors and to an unlimited number of accredited investors are permitted. An issuer under Rule 505 may not use any general solicitation or general advertising to sell its securities.

Rule 506 has no dollar limitation of the offering. Rule 506 is available to all issuers for offerings sold to not more than thirty-five non-accredited purchasers and an unlimited number of accredited investors. Rule 506, however, unlike 504 and 505, requires an issuer to make a subjective determination that at the time of acquisition of the investment each non-accredited purchaser meets a certain sophistication standard, either individually or in conjunction with a "Purchaser Representative." Like Rule 505, Rule 506 prohibits any general solicitation or general advertising.

"Accredited Investor" is defined in Rule 501(a). The principal categories of accredited investors are as follows: (1) Directors, executive officers, and general partners of the issuer, including general partners of general partners in two-tier syndicating. (The term "executive officers" is more fully defined in the Regulation.) (2) Purchasers whose net worth either individually or jointly with their spouse equals or exceeds \$1 million. It is important to note that while there is no definition of "net worth" in Regulation D, there similarly is no requirement of liquidity in the calculation of net worth for this accreditation standard. Thus, a purchaser's home, furnishings, etc. are includable in the determination of net worth. (3) Natural person purchasers who have "income" in excess of \$200,000 in each of the two most recent years and who reasonably expect an income in excess of \$200,000 in current year (or \$300,000, jointly with their spouse). (4) A business entity will be treated as a single accredited investor unless it was organized for the specific purpose of acquiring the securities offered, in which case each beneficial owner of the security is counted separately.

With any Reg D (Rule 504, 505 or 506) private placement, a "private placement memorandum" is carefully prepared. This looks like a prospectus. It sets forth the business plan, key facts about management and the business entity, risks that the business will face, and much more. Pro forma financial statements are usually included. It can easily cost tens of thousands of dollars to have a private placement memorandum undertaken.

Again, this information is provided for informational purposes only. I urge all those who seek to raise capital to consult with an experienced securities attorney - BEFORE they solicit or accept any contributions of capital.

I hope this helps those seeking to raise capital understand the immediate need to consult with a qualified securities law attorney - before going any further in discussing a business plan, encouraging or soliciting investment, etc.

Seek Your Own Legal, Tax and Financial Counsel. Please note that I do not practice in the area of public offerings, nor private placements, nor charitable / non-profit entities. Nor can I refer you to any attorneys who do practice in this area, although there are many qualified attorneys who work in the securities law arena. I suggest that you seek you qualified legal counsel in your area to provide advice on these matters. You may desire to visit lawyers.com and do a search for attorneys in your area, and interview several lawyers / law firms, before proceeding. Thank you. Ron