

Blue Sky Resale Requirements, Standard & Poor & The Significance to Pink Sheet, OTCBB and Canadian Companies

(updated March 26, 2011)

State securities laws are often called "Blue Sky" laws. It is not enough to comply with US Federal securities laws in Canada or the US. All applicable Blue Sky and provincial securities laws must also be complied with when issuing or reselling securities. In order to purchase or sell securities you must either register those securities or transactions with each applicable securities regulator or be able to rely on an



exemption from registration. This requirement includes all secondary trades of securities acquired under a private placement or a registered offering. This article will discuss the resale or secondary trades of securities and the significance of being registered with Standard & Poor if you are a Pink Sheet or OTCBB

Lets start with a fairly straight forward example.

Let us assume an issuer registered a securities offering with the SEC and the state of Washington and New York. The issuer would be able to freely sell the securities registered to residents of the state of Washington and New York. The issuer would not be able to sell these securities to anyone outside of those two states. The individuals or entities purchasing the securities would be able to resell the securities they acquired to other residents of New York and Washington for one year from the date of clearance of the registered offering. They would not be able to sell these securities to residents of other jurisdictions unless they were able to rely on an exemption from the securities laws of that other jurisdiction.

What happens after one year? Secondary trades or resales after that initial year must be made on reliance of an exemption from the registration requirements on a state by state, province by province basis. Individual sellers would need to ensure that there is a registration and distribution exemption where they reside as seller and where the purchaser resides. This requirement is easily accommodated if the securities are listed or quoted on a recognized exchange.

The securities laws in every state and province exempt secondary trades of securities listed on a recognized exchange from registration requirements. US and Canadian securities regulators recognize at a minimum the following exchanges for this purpose:

- New York Stock Exchange;
- the American Stock Exchange; and
- NASDAQ - NMS.

A number of US states have designated that all exchanges registered with the US Securities Commission as a "national securities exchange" are recognized in that state. There are currently fourteen securities exchanges registered with the SEC under Section 6(a) of the *Securities and Exchange Act of 1933* as national securities exchanges:

- NYSE Amex LLC (formerly the American Stock Exchange)

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- BATS Exchange, Inc.
- NASDAQ OMX BX, Inc. (formerly the Boston Stock Exchange)
- C2 Options Exchange, Incorporated
- Chicago Board Options Exchange, Incorporated
- Chicago Stock Exchange, Inc.
- EDGA Exchange, Inc.
- EDGX Exchange, Inc.
- International Securities Exchange, LLC
- The Nasdaq Stock Market LLC
- National Stock Exchange, Inc.
- New York Stock Exchange LLC
- NYSE Arca, Inc.
- NASDAQ OMX PHLX, Inc. (formerly Philadelphia Stock Exchange)

Canadian securities regulators also recognize the:

- CNSX;
- TSX;
- TSX Venture;
- Montreal Stock Exchange; and
- the London Stock Exchange.

In addition to the foregoing various states and provinces may recognize a wider group of exchanges.

It should be noted that the state exemption of secondary trades of securities listed on recognized exchanges is driven by the preemption of state registration requirements under section 18(b)(4)(A) of the *Securities Act of 1933*. Section 18(b)(4)(A), however, this does not eliminate the need for broker-dealers to submit notice filings and fees when selling securities that are not otherwise exempt under state law.

In [April of 2002](#), the National Association of Securities Dealers recommended that state securities regulators add the Toronto Stock Exchange ("TSX") as a recognized exchange for the purpose of this exemption. In August of 2004, they sought [public comment](#) on expanding this recommendation to include the TSX Venture Exchange. The effect of the adoption by individual States of the exemption would be to enable residents of that State to trade securities listed on the TSX and TSX Venture Exchange without restrictions or in reliance on other exemptions. The draft Uniform Securities Act of 2002 introduced a secondary trading exemption for securities listed on the TSX. As of March 30, 2011, sixteen states have adopted a secondary trading exemption for securities listed on the TSX (GA, HI, ID, IN, IA, KS, ME, MN, MO, NM, OK, SC, SD, VT, WA and WI). Wisconsin expanded the exemption to include securities listed on the TSX Venture Exchange. Four states also exempt secondary trading in the securities of foreign issuers who meet certain market value, net assets and net income requirements (AZ, CA, MT and NM). For instance, the issuer is required to have a minimum of \$25 to \$100 million in net assets is required to use this exemption. Other than in the foregoing states the TSX and the TSX Venture Exchange companies remain subject to the same limitations as OTCBB and Pink Sheet listed companies in the US when it comes to secondary trading.

The OTCBB and Pink Sheets are not considered recognized exchanges for secondary trading in Canada or the US and it is doubtful that they will be added in the future.

If the securities to be sold are quoted on the OTCBB or Pink Sheets or listed on a Canadian exchange such as the TSX, TSX Venture Exchange or CNSX a seller must rely on the various non-issuer exemptions available under US State securities laws.

In the US, non-issuer exemptions that could be relied on include the following:

- **Manual exemption.** This exemption is available if the issuer of the securities publishes certain continuous disclosure information on an ongoing basis in a recognized manual. The recognized manuals vary among the 42 states and 3 territories that have this exemption, the most commonly recognized being Standard & Poor's and Mergent (fka Moody's). Issuer should be aware, the latest version of the manual exemption being adopted has a 3 year seasoning or \$2 million in asset requirement before an issuer can rely on the manual exemption. Some states also outright ban companies who trade on the OTC markets from using this exemption.
- **Exchange Act exemption.** Approximately 20 states exempt the secondary trading of securities registered under Section 12(g) of the *Securities and Exchange Act of 1934* and a smaller number of states exempt issuers that file reports under Section 15(d) of the *Securities and Exchange Act of 1934* . In addition, several states exempt issuers that satisfy the information supplying requirements of Rule 12g3-2(b) under the *Securities and Exchange Act of 1934* .
- **Isolated sales.** This exemption is available if the number of transactions is limited to one or two transactions in the state in a year.
- **Debt securities not in default.** Approximately 35 states have a non-issuer exemption for debt securities. The securities must not be in default. The no default requirement varies state to state as being no default during the current fiscal year, no default during the three preceding fiscal years or no default during the existence of the issuer or any predecessor.
- **Non-issuer transactions.** A few states generally exempt sales of securities by non-issuers.
- **Sales to institutional investors.** Almost all states exempt sales to institutional investors. This is an issuer and non-issuer exemption.
- **Dealer trades.** Assuming the seller was a dealer, trades between dealers to domestic dealers as well as dealers to international dealers are exempt from the Blue Sky laws.

The foregoing exemptions are the same exemptions which would be relied on if the securities had been acquired in a private placement and the securities had been held for the required federal seasoning period (Rule 144) and the stockholder was now were looking to sell those securities.

It is our opinion that the manual exemption offers the best coverage for secondary trades. As stated above, the manual exemption services, offered by both Standard & Poors and Mergent, currently "Blue Sky" securities up to 38 states. An issuer with securities quoted on the OTCBB or Pink Sheets would be well advised to engage one of the manual services in order to offer its stockholders a clear secondary trading exemption. Arguably, it is the stockholder who bears the legal responsibility for ensuring an available exemption exists for his secondary trading activity. The issuer, however, could find the company embroiled in a regulatory matter it could have easily avoided if it provided a clear harbour from the registration requirements for the secondary trades of its stockholders.

A chart of the various state manual exemptions is attached below. We have included for informational purposes the actual blue sky rules on a separate web page entitled [Blue Sky Manual Exemptions](#).

If you are interested in the Canadian resale rules [click here](#).

This information was last updated on March 26, 2011.

Blue Sky - Secondary Trading of Common Stock/ADR Manual Exemptions

(always check for current rule - laws are constantly changing)

(List last updated March 26, 2011)

State	Manual Listing Section	Recognized Securities Manuals	Filing Required
Alabama	N/A	N/A	N/A
Alaska	§ 45.55.900(b)(17) § R3 AAC 08.910	Standard & Poor's; Moody's Investors Service, Inc.; Financial Communications Company, Inc.; which were formerly known as "Moody's; Manuals"; or Fitch Investors Service, LP.	No
Arizona	§ 44-1844(A)11 § R14-4-114	Standard & Poor's Corporation Records; Mergent's Industrial Manual; Mergent's Municipal and Government Manual; Mergent's Transportation Manual; Mergent's Public Utility Manual; or Mergent's Bank and Finance Manual.	No
Arkansas	§ 23-42-504(a)(2) § R504.01(A)(2)	Standard & Poor's Corporation Records; Moody's Industrial Manual; Moody's Bank and Finance Manual; Moody's Municipal and Government Manual; Moody's Transportation Manual; Moody's Public Utility Manual; Moody's OTC Industrial Manual; or Moody's International Manual.	No
California	N/A	N/A	N/A
Colorado	§11-51-308(b)(1) § R51-3.9	Standard & Poor's Standard Corporation Descriptions; Moody's Industrial Manual; Moody's Municipal and Government Manual; Moody's Transportation Manual; Moody's Public Utility Manual; Moody's Bank and Finance Manual; Moody's OTC Industrial Manual; or Moody's International Manual.	No
Connecticut	§ 36b-21(b)(2) § R36b-31-21b-2	Standard & Poors Standard Corporation Descriptions; Standard & Poors Corporation Records; Moody's Industrial Manual; Moody's Bank and Finance Manual; Moody's Transportation Manual; Moody's OTC Industrial Manual; Moody's Public Utility Manual; or Moody's International Manual.	No
Delaware	§7309(b)(2) §R508	Standard & Poor's Corporation Records; Moody's Industrial Manual; Moody's Transportation Manual; Moody's Public Utility Manual; Moody's Bank and Finance Manual; Fitch's Individual Stock Bulletin; or Moody's OTC Industrial Manual.	No
District of	§ 31-5604.02(2)	Standard & Poor's Standard Corporation Descriptions;	No

Columbia	§ R1900.11 and 12	Mergent's Industrial Manual; Mergent's Transportation Manual; Mergent's Public Utility Manual; Mergent's Bank and Finance Manual; Mergent's International Manual; Fitch's Individual Stock Bulletin; or Mergent's OTC Industrial Manual.	
Florida	§517.061(20) §R69W-500.010	Standard & Poor's Manuals; or Mergent FIS, Inc.'s Manuals	No
Georgia	§10-5-11(2) Administrative Order	Standard & Poor's Standard Corporation Descriptions; Mergent's Industrial Manual; Mergent's Transportation Manual; Mergent's Public Utility Manual; Mergent's Bank and Finance Manual; Mergent's Municipal and Government Manual; Mergent's International Manual; or Fitch's Individual Stock Bulletin.	N/A
Guam	§ 46402(12)(b)(2)	Standard & Poor's Corporation Records; or Mergent FIS, Inc.'s Manuals	No
Hawaii	§202(2)	Standard & Poor's Corporation Records; or Mergent FIS, Inc.'s Manuals.	No
Idaho	§30-14-202(2) §0.56	Standard & Poor's Corporation Records; Best's Insurance Reports- Life-Health; Mergent's Industrial Manual; Mergent's International Manual; or Walkers Manual of Western Corporations.	No
Illinois	N/A	N/A	N/A
Indiana	§23-19-2-2-(2)(2) IC23-2-1-2(b)(3)(C)(i)	Standard & Poor's Manuals; Mergent FIS, Inc.'s Manuals and Best's Insurance Reports Manuals.	No
Iowa	§502.203(2)(a)	Standard & Poor's Manuals; or Mergent FIS, Inc.'s Manuals;	No
Kansas	§17-12a202(2)) §81-5-17	Standard & Poor's Standard Corporation Descriptions; or Mergent FIS, Inc.'s Manuals.	No
Kentucky	N/A	N/A	N/A
Louisiana	N/A	N/A	N/A
Maine	§16202(2) Order 09/2401	Standard & Poor's Manuals; Mergent FIS, Inc.'s Manuals; or Fitch Manuals.	No
Maryland	§11-602(2) §02.02.04.05	Standard and Poor's Standard Corporation Descriptions; Mergent's Industrial Manual; Mergent's Transportation Manual; Mergent's Public Utility Manual; or Mergent's Bank and Finance Manual.	No

Massachusetts	§110-402(b)(2) Policy Statement 7/19/2004	Standard & Poor's Manuals; or Mergent, Inc. Manuals.	No
Michigan	§55-2008-2-451-2202 s.2(2) §R451.802.2	Standard and Poor's Corporation Records; Moody's Industrial Manual; Moody's Transportation Manual; Moody's Public Utility Manual; Moody's Bank and Finance Manual; Moody's Municipal and Government Manual; Moody's OTC Industrial Manual; Best's Life Insurance Reports; or Best's Insurance Reports (fire and casualty).	No
Minnesota	§80A.46 s.202(2) §R2876.2020	Standard & Poor's Corporation Records; Mergent Industrial Manual and News Reports; Mergent Bank and Finance Manual and News Reports; Mergent Transportation Manual and News Reports; Mergent Public Utility Manual and News Reports; Mergent OTC Industrial Manual and News Reports; or Mergent International Manual and News Reports.	No
Mississippi	§75-71-203(2) §R709	Standard & Poor's Standard Corporate Descriptions or Records; Mergent's Industrial Manual; Mergent's Municipal and Government Manual; Mergent's Transportation Manual; Mergent's Public Utility Manual; Mergent's Bank and Finance Manual; Mergent's OTC Industrial Manual; or Mergent's International Manual.	No
Missouri	§409.2-202(2) §R15 CSR 30-54.100	Fitch's Rating Registrar	No
Montana	N/A	N/A	N/A
Nebraska	§8-1111(2)(b)	Standard & Poor's Standard Corporation Descriptions; or Mergent FIS, Inc.'s Manuals.	No
Nevada	§90.530.3 §R NAC 90.510	Standard & Poor's Standard Corporate Descriptions or Records. Mergent's Industrial Manual; Mergent's Municipal and Government Manual; Mergent Public Utility Manual; Mergent Transportation Manual; Mergent's Bank and Finance Manual; or Mergent's International Manual.	No
New Hampshire	§421-B:17(II)(b)	Standard & Poor's Standard Corporation Descriptions; Mergent FIS, Inc.'s Manuals; or Fitch's Manuals.	No
New Jersey	§49:3-50(b)(2) §R13:47A-12.4	Standard & Poor's Standard Corporation Descriptions; or Mergent FIS, Inc.'s Manuals.	No

New Mexico	§58-13C-202(B) §R12.11.12.9	Standard & Poor's Standard Corporation Descriptions; Mergent FIS, Inc.'s Manuals; or Fitch's Manuals.	No
New York	N/A	N/A	N/A
North Carolina	§78A-17(2) §R18 NAC-06.1202	Standard and Poor's Corporation Records; Mergent's Industrial Manual; Mergent's Over the Counter Industrial Manual; or Mergent's International Manual.	No
North Dakota	§10-04-06(8)	Standard and Poor's; Mergent's Industrial Manual; Mergent's Bank and Finance Manual; Mergent's Transportation Manual; Mergent's Public Utility Manual; or Fitch's Individual Stock Bulletin.	No
Ohio	§1707.03(M)(3)	Standard & Poor's Standard Corporation Descriptions; or Mergent FIS, Inc.'s Manuals.	No
Oklahoma	§1-202(2) §R660-11-11-40	Standard & Poor's Corporation Records Best's Insurance Reports: Moody's Industrial Manual; or Moody's International Manual.	No
Oregon	§59.035(10) §R441-035-0030	Standard & Poor's Standard Corporation Descriptions; Mergent FIS, Inc.'s Manuals; or Fitch Investor Services' Manuals.	No
Pennsylvania	N/A	N/A	N/A
Puerto Rico	§882(b)(2) §R Article 37	Standard and Poor's Standard Corporation Descriptions; Moody's Industrial Manual; Moody's Transportation Manual; Moody's Public Utility Manual; or Moody's Bank and Finance Manual.	No
Rhode Island	§7-11-402(3) §R402(3)-1	Standard & Poor's Manuals Fitch Investor Services, Inc.'s Manual; Mergent, Inc.'s Manuals; or Moody Investor Services' Manuals.	No
South Carolina	§35-1-202(2) §R113-17	Standard & Poor's Corporation Records; or Moody's Manuals.	No
South Dakota	§47-31B-202(2) §R20:08:07:30	Standard and Poor's Standard Corporation Descriptions; Mergent's Industrial Manual; Mergent's Bank and Finance Manual; Mergent's Public Utility Manual; Mergent's Municipal and Governmental Manual; Mergent's Transportation Manual; Mergent's OTC Industrial Manual; Mergent's OTC Unlisted Manual; or Mergent's International Manual.	N/A
Tennessee	N/A	N/A	N/A

Texas	§5.O §R109.7	Standard and Poor's Corporation Records (incl. the Daily News Section); Best's Insurance Reports Life-Health; Mergent's Bank and Finance Manual and News Reports; Mergent's Industrial Manual and News Reports; Mergent's Public Utility Manual and News Reports; Mergent's Transportation Manual and News Reports; Mergent's Municipal and Government Manual and News Reports; Mergent's International Manual and News Reports; or Mergent's OTC Industrial Manual.	No
Utah	§61-1-14(2)(b) §R164-14-2b	Standard and Poor's Corporation Records; Mergent's Industrial Manual; Mergent's Bank and Finance Manual; Mergent's Transportation Manual; Mergent's OTC Industrial Manual; Mergent's Public Utility Manual; Mergent's OTC Unlisted Manual; or Mergent's International Manual.	Filing Rqd. in some circumstances
Vermont	9-150-5202(2)	Standard & Poor's Corporation Records; or Moody's Manuals.	No
Virginia	N/A	N/A	N/A
Washington	§RCW 21.20.320(2) §WAC 460-44A-100 §WAC 460-10A-160	Standard & Poor's Corporation Record; Fitch's Investors Service; and Moody's Investors Service.	No
West Virginia	§32-4-402(b)(2) §R32-15.02	Standard & Poor's Corporation Reports; Moody's Industrial Manual; Moody's Transportation Manual; Moody's Public Utility Manual; Moody's Bank and Finance Manual; Moody's Municipal and Government Manual; Moody's OTC Industrial Manual; Best's Life Insurance Reports; and Best's Insurance Reports (Fire & Casualty)	No
Wyoming	§480-551.202(2) §R DFI-Sec 2.02(9)(d)	Standard & Poor's Manuals Fitch Investor Services, Inc.'s Manual; or Mergent, Inc.'s Manuals.	No



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