

Corporate boutique law firm with big firm capability A look inside the SEC, Blue Sky regulations and Rule 419

Shustak Jalil & Heller is a specialty law firm with a national practice focused in the areas of securities, corporate finance and business law. The firm operates from offices in New York, California, and Geneva, Switzerland and is comprised of experienced, sophisticated attorneys who have earned a solid reputation as strategic problem solvers, ardent negotiators and successful deal makers. As a "boutique" law firm, Shustak Jalil & Heller is unique in its ability to handle the most complex legal matters, while providing its clients with a close, personal service - not often available at larger, less intimate firms. The Firm represents a select clientele that includes domestic and foreign publicly-traded corporations; brokerage firms; banks; insurance companies; hedge and mutual funds and entrepreneurs. The firm routinely handles cases that range from arbitrations, trials and appeals in State and Federal Courts and securities self-regulatory organizations throughout the country to municipal bond financings, broker/dealer registrations and public and private securities offerings. URL: www.shufirm.com. For additional information contact Shustak, Jalil, and Heller at: phone 212- 688-5900 fax 212- 688-6151 or email email@shufirm.com. Richard S. Heller, founding partner spoke with *Inside Law*.

IL: Give us some background on your firm; how big is it; what are your major areas of practice?

RH: We have three offices. Here in Manhattan we have an office on Madison and 55th Street; and an office in San Diego, and through an of counsel relationship, an office in Geneva. We have a large firm presence but not that many bodies, so we're able to get an awful lot done economically with ten attorneys.

IL: What is your own background? I know that obviously you are one of the founders of the firm. Describe how you became a partner at Shustak, Jalil and Heller.

RH: Well, it goes back a bit. This is our 9th year, but prior to that my first large law job was at Cahill Gordon where I met one of my partners 20 years ago. Then I went on to Fried Frank to start and

head up their Blue Sky Department. I went to a small firm which was the first "Blue Sky" boutique in the country and thereafter I began Shustak, Jalil and Heller.

IL: I understand you've also been twice invited by the SEC to help create recommendations for the White House Conference on Small Business.

RH: Yes. Each year the SEC has a gathering of invitees in the securities industry to discuss the latest topics in the Securities industry, and it's comprised of attorneys, investments bankers, and accountants who speak openly about trends in the securities world and then make recommendations to the White House Small Business Conference. The National Securities Market Improvement Act of 1996 was a direct result, growing out of the comments from that forum.

IL: Give our listeners an example of some of the deals you've personally handled in the past. Are there any that stick out in your mind as being significant?

RH: I personally am most proud of doing the first asset-backed deals in the country with New York Life. I, at that time, handled for their then structured finance department all of their Blue Sky filings. We got so enmeshed in it that we actually went to a North American Securities Administrators Association policy forum which created the asset-backed guidelines that are currently in place today.

IL: You were recently quoted in *The Wall Street Journal*

discussing the application of Rule 419. What is Rule 419, and why is it such a hot topic?

RH: You may know that blank check companies are looked at askance or have been in the past, and I think to a degree still are. In fact, Blue Sky regulations prohibit blank check offerings by and large. But Rule 419 is an interesting twist. It enables a company that has a general plan to

purchase, if we acquired a company that you found interesting, you could stay in, as an investor, or elect to have your money back.

IL: How often does that happen?

RH: It's not common. The rule has been there for a while, but I think it's still cutting edge stuff.

IL: I understand you've got a pretty good background yourself in Blue Sky law. Do you want to talk about that?

RH: I started at Cahill in their Blue Sky department, and when Fried Frank came along, they had me set up their Blue Sky department which made me realize that this was a much neglected area of the law. I went out with another fellow to start this Blue Sky boutique, and in so doing, I think was instrumental in creating a little cottage industry because a number of attorneys have since gone out to be "Blue Sky" lawyers. It has been somewhat effected by the National Securities Market Improvement

Act which has made listed deals no longer subject to state review. They're preempted from state review, but there are a lot of deals out there that are small-cap company offerings, for instance, that are still regulated by Blue Sky examiners. There's a lot of merit review for small deals, so essentially the Blue Sky process is alive and well.

IL: There may be a few people out there who are not quite as familiar with Blue Sky law. Could you give a quick overview of what it is?

RH: It's state securities regulation. It actually precedes the SEC by almost twenty years. I guess back in around 1919 or so,

there was a Kansas case involving fraudulent promoters who sold what was stated in a U.S. Supreme Court decision, as pieces of paper backed by nothing more than "clear blue sky." Hence the name "blue sky," and I am sure if it was from New York, for instance, it might have been called "Brooklyn Bridge" law to this day. But it spread as a populist movement from the middle of the country to both oceans such that every state in the union has its own Blue Sky securities law today.

IL: For CEOs interested in selling securities, obviously they are going to need legal representation. How far ahead of time should they really consider looking into a retaining law firm?

RH: I think that depending on what they want—private offering vs. public offering, different chunks of time are involved, but obviously as much lead time as possible is helpful. For a private offering, while there is no longer, under Rule 506, state review, and there is no substantive review at the SEC, you have to do due diligence, you have to find out whether or not you have indications of interest out there for people who really want to invest in you. You want to make strategic alliances with investment banking firms, with accounting firms. So we have found that it is helpful to start sooner rather than later. For public offerings, you are talking anywhere from generally six months to go public from the moment you decide to do so.

IL: Now obviously your firm has a lot of experience in this area. Why would you necessarily recommend your firm as opposed to any other firm out there; what makes your firm so much better than everyone else?

RH: We are very competitive. We all have big firm training, so I believe we bring a very professional work product to the transaction. We have worked on literally thousands of transactions over the years. And unlike the large firms where they tend to staff them with junior associates, this is pretty much a hands-on operation where when you engage one of the partners to work on the matter together with one of the senior associates that we have, you get what you see, and you get a very good work product. ■



Richard S. Heller
Founding Partner

file its initial filing with the SEC, and raise initial monies after it clears the SEC. Those monies are escrowed until the purpose is accomplished by the company, so that if a dot-com company decided that it wanted to itself go public, it would raise the initial seed money, if you will, after it went effective with the SEC on the condition that when it found its target that it wanted to acquire, it would have to then resubmit with the SEC and the various states in which it wanted to sell, and give its initial shareholders at that point the opportunity to get their money back. So that if you bought into us at the outset, after we went effective with the SEC and you bought the initial