



Registered Broker-Dealer a Must for Money-Raising in the U.S.

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Many foreign companies look to the U.S. as a location where they may be able to secure investment for their development or expansion. A case from last year highlights the importance of dealing with persons that are properly licensed by the Securities and Exchange Commission (the "SEC") to act as middlemen in money-raising activities.

Neogenix Oncology was a successful start-up company based in the Washington, D.C. suburbs. During certain rounds of its fund-raising activities, the company made the mistake of paying an unlicensed fundraiser who helped the company secure financing. That error resulted in the company being at risk of having to reimburse its shareholders for the funds raised by the unlicensed intermediary. The default by the company also prohibited it from raising additional capital and caused accounting problems that resulted in the company being unable to finalize and file its accounts. Since the company was engaged in therapeutics development and faced a healthy cash burn rate, those problems were magnified. Ultimately, the company was forced to file for bankruptcy protection in order to rid itself of those issues.

The case provides a salient lesson for any company raising funds in the U.S., that it should be at pains to insure that such activities are conducted by a registered broker-dealer. The failure to do so can result in civil and criminal sanctions under federal and state laws, and, besides having to reimburse existing investors, the adverse publicity generated by an SEC investigation is likely to have a chilling effect on the company's ability to raise funds in the future.

Many companies will make promises about their ability to raise financing in the U.S. Foreign companies should make sure those middlemen are aware of and in compliance with the legal requirements inherent in such activity.

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