



The Path to Blue Sky Compliance

An introduction to Blue Sky compliance for Reg A, Tier 2 offerings and an analysis of notice filings and other requirements across all US states.

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Part I: How Cloudy is the Blue Sky for Your Reg A, Tier 2 Offerings?

An introduction for Regulation A, Tier 2 issuers into Blue Sky requirements for Reg A, Tier 2 offerings. Part I discusses compliance misconceptions, state notice filings, and penalties due to non-compliance.



HOW CLOUDY IS THE BLUE SKY FOR YOUR REG A, TIER 2 OFFERINGS?

Blue Sky Law Requirements for Regulation A, Tier 2 Offerings

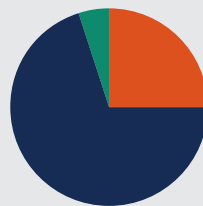
Regulation A, Tier 2 offerings allow issuers, including private companies, to raise funds from the public by selling securities. Unlike when conducting a public offering, issuers that utilize a Regulation A, Tier 2 offering are exempt from registering their securities with the Securities and Exchange Commission (SEC), but they do need to comply with certain disclosure requirements including filing an offering statement on Form 1-A with the SEC. In addition to complying with the more well-known and observed federal requirements, issuers conducting a Regulation A, Tier 2 offering must also comply with lesser-known state securities laws, known as blue sky laws.

Under Regulation A, Tier 2, states are preempted from requiring registration or qualification of offerings, leading many issuers to mistakenly believe that blue sky laws can be disregarded entirely. However, states can, and do, impose filing and fee requirements on issuers, as well as investigate fraud related to the offering. States that enforce blue sky laws impose additional requirements and restrictions on the offer of sale of securities.

(Continued on next page)

30% of Reg A, Tier 2 Offerings
May Not Be Compliant

*Based on Agile Legal's analysis and research into 2022 1st quarter offerings



- Non-Compliant
- Compliant
- Partially Compliant

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Blue Sky Law Requirements for Regulation A, Tier 2 Offerings (Cont.)

Unlike the singular federal framework, blue sky laws vary from state to state. In the case of Regulation A, Tier 2 offerings, the most notable requirement is a state notice filing. While some states mandate a similar notice filing, there are variations in the timing, filing fee amount, issuer-dealer requirements, and method of filing from state to state. For instance, Maryland requires notice filings be made 21-days in advance of the first offer or sale in Maryland,¹ while Mississippi requires a notice filing no later than 15 days after the first sale in Mississippi.² As another example, Texas requires a fee of \$70 plus 1/1,000 of the total authorized sales in the state,³ while New York collects \$2,135 if the offering involves real estate and \$1,235 if not.⁴ The complexity and inconsistency of blue sky laws across states can be confusing for businesses attempting to navigate the legal requirements for Regulation A, Tier 2 offerings.

Although compliance with blue sky laws adds complexity and cost to the offering process, failure to comply with these laws can result in penalties, enforcement actions, and negative consequences for brand reputation and future offerings. Compliance with blue sky laws should be considered well before the point of offering to avoid complications. The ideal time to begin the process is at the qualification stage, prior to any sales. This allows for adequate time to review and comply with state-specific requirements, and to ensure all necessary documentation and filings are completed accurately and in a timely manner.

“ It is important for companies to work with experienced professionals to navigate the blue sky law requirements in each state where they plan to offer or sell their securities.

Ultimately, Regulation A, Tier 2 offerings provide a valuable opportunity for issuers to raise funds through the sale of securities. However, it is important for issuers to remember that they must comply with all securities laws, including lesser-known blue sky laws, to ensure they are not violating any regulations. Failure to comply with blue sky laws can be costly and de-rail an issuer's plans.

Mitigate Your Risk So You Can Worry Less

Agile Legal's compliance services are designed to help companies and the legal professionals serving companies conducting Regulation A, Tier 2 offerings navigate the complex web of state blue sky laws. With our expert guidance, companies can rest assured that they are meeting their legal obligations and avoiding costly penalties and legal liabilities. We offer comprehensive compliance solutions tailored to the specific needs of each client, by providing everything from initial assessments to ongoing sales monitoring and reporting. Our team of experienced attorneys, paralegals and compliance professionals have a thorough understanding of the regulatory landscape, and we help companies stay up to date with the latest regulatory developments and best practices.

Enlisting Agile Legal to keep your Regulation A, Tier 2 offerings in compliance will reduce the risk your fund is exposed to, giving you peace of mind.

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Part II: Reg A, Tier 2 Compliance Comparisons Across US States

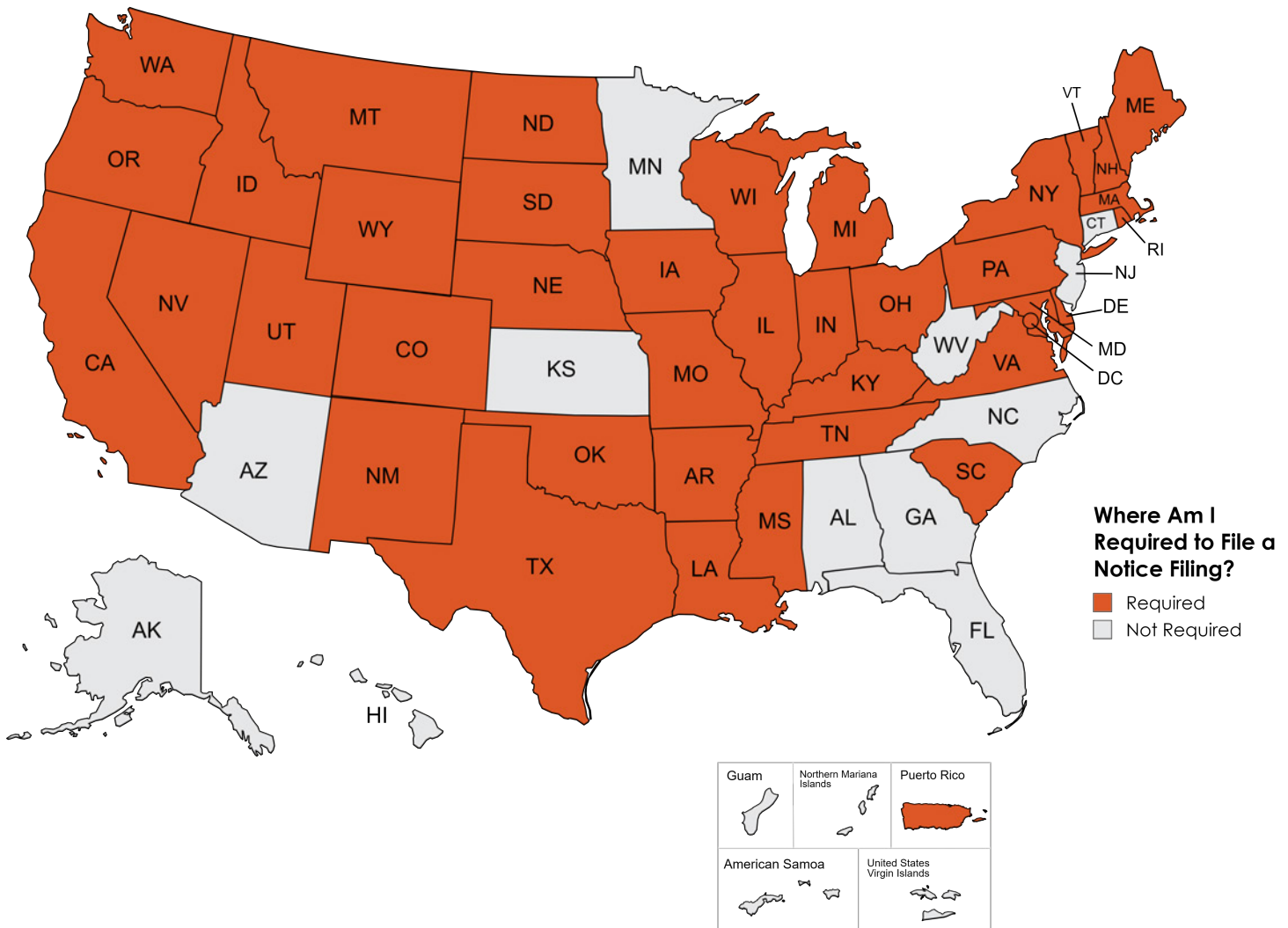
A further analysis and explanation of Reg A, Tier 2 state notice filings and other requirements across all 50 states.



Understanding Reg A, Tier 2 is not a walk in the park.

Regulation A, Tier 2 offerings are of a special class that do not require state registration or qualification. However, with the passing of the National Securities Markets Improvement Act (NSMIA) of 1996, it was determined that states may impose notice filing requirements on issuers of Reg A, Tier 2 offerings.

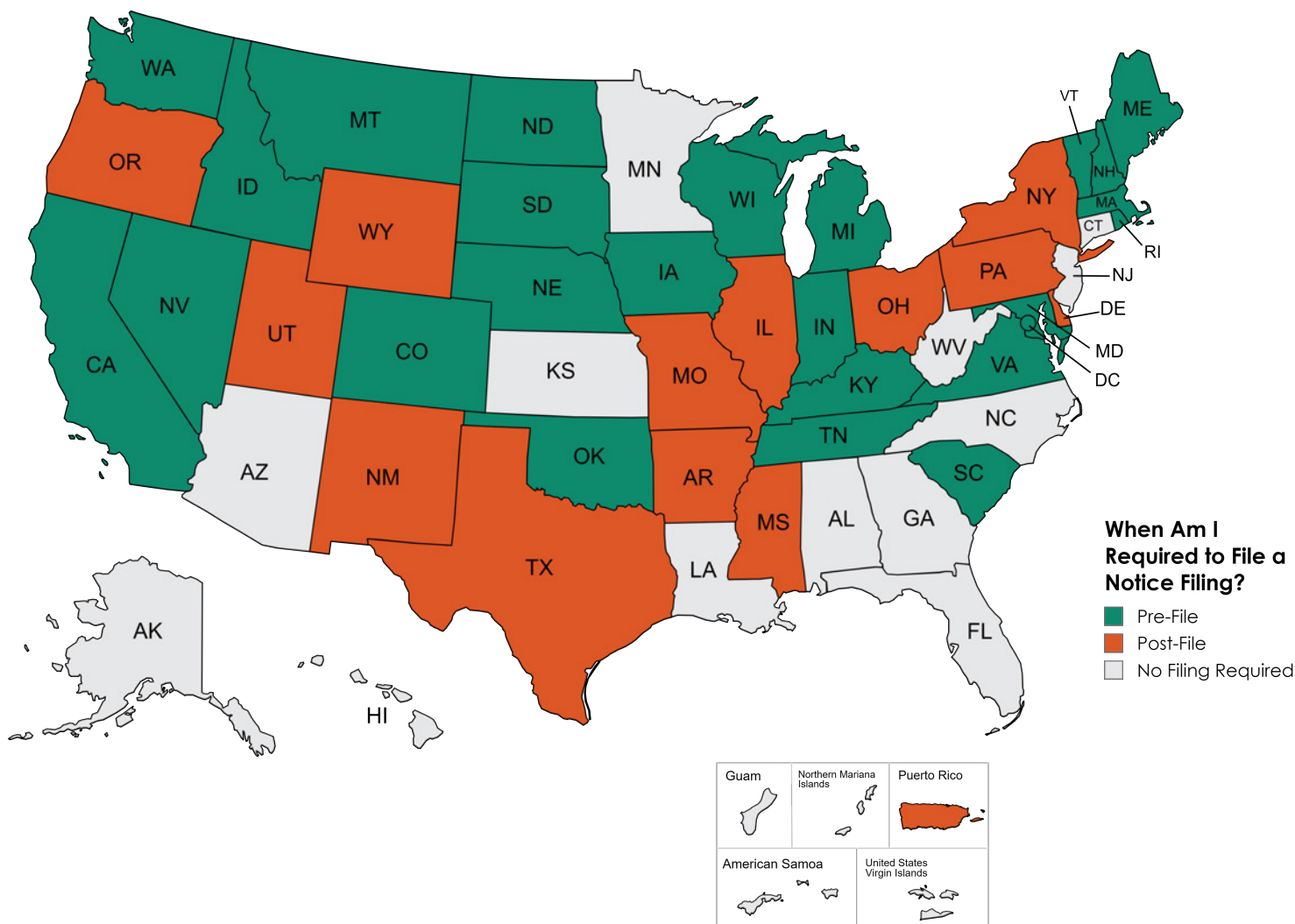
The submission of state notice filings may be tedious but is a necessary step to ensure an offering's compliance and avoid unnecessary penalties. There are numerous nuances in this process. Agile Legal hopes to simplify the explanation of this process so that you can quickly get the information you need to start selling ASAP.



Where Am I Required to File a Notice Filing?

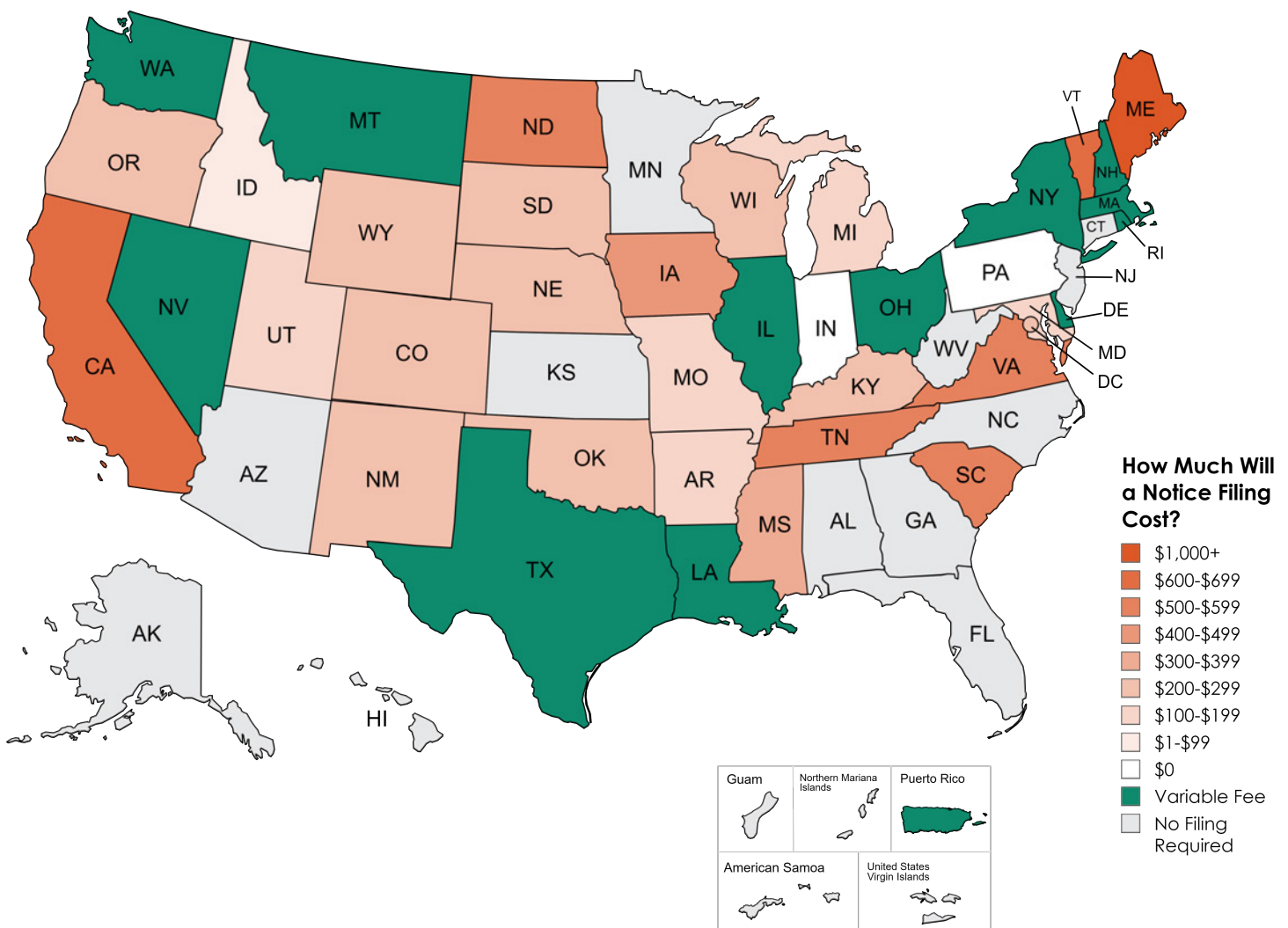
This is the first question you'll want to ask before moving forward in any state. A vast majority of states, as well as the US territory Puerto Rico, require notice filings to be made with their respective state governments. Surprisingly, there are several states in which submitting notice filings is not required at all. This includes Alabama, Alaska, Arizona, Connecticut, Florida, Georgia, Hawaii, Kansas, Minnesota, New Jersey, North Carolina, and West Virginia.

Not all states that require notice filings will require issuers to renew their nice offerings. Many states consider notice filings valid for one year after the initial filing. However, some states such as New York differ from this norm and require deeper inspection into offerings.



Once you've narrowed down which states you'll need to submit notice filings to, you'll want to make sure you understand the filing timeline. Many states dictate that you must have filed your notice filing with the state before you begin selling or offering your securities. Other states are more lenient and allow you to file soon after selling. These states offer a grace period after you begin to sell.

Issuers will also need to understand what each state defines as a sale. Do written commitments from investors count, or does it only count as a sale when money is exchanged? These small details can be confusing but ultimately impact the risk to which your offering is exposed.

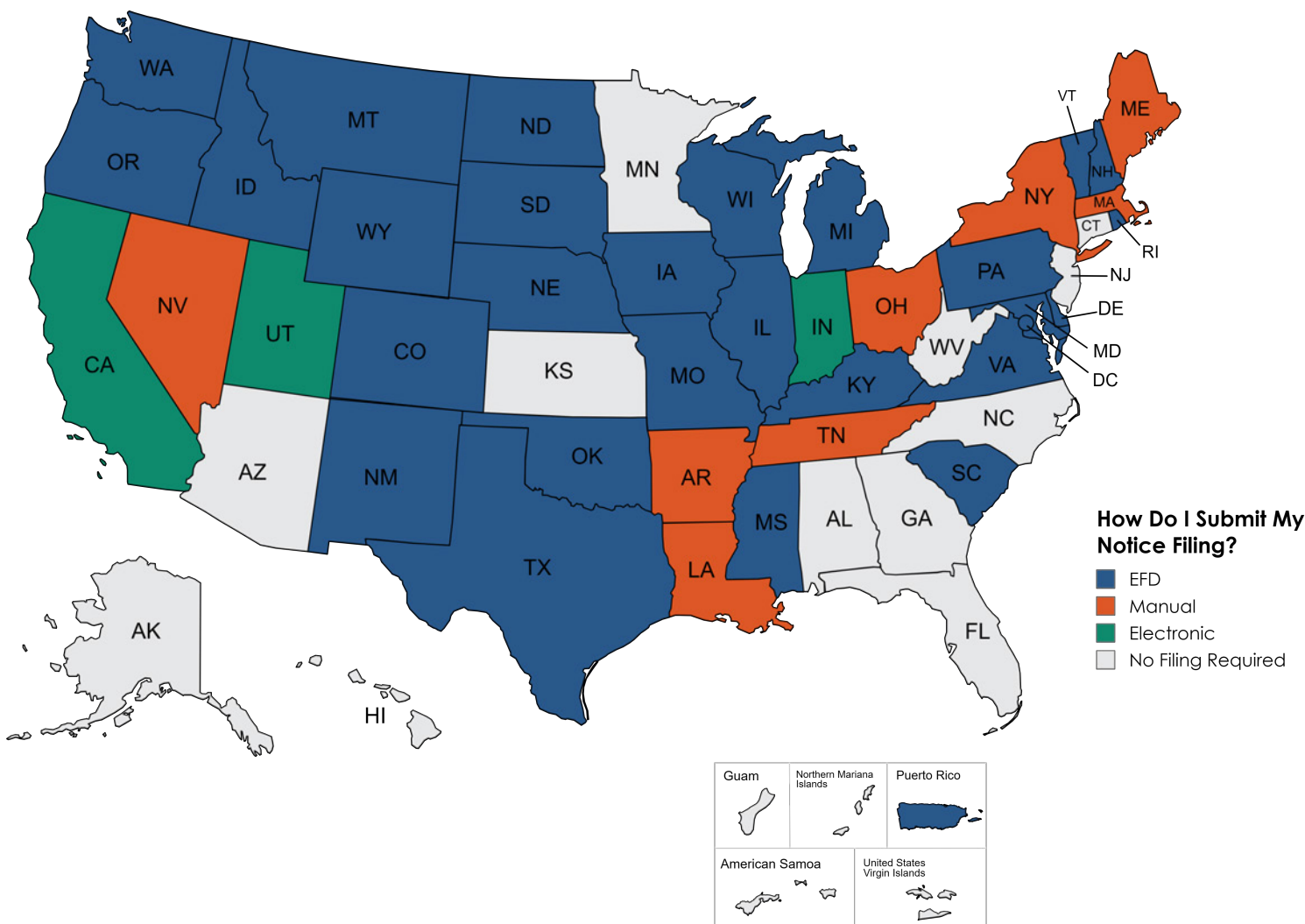


How Much Will Notice Filings Cost?

Calculating the cost of notice filings can be intimidating, especially if you're filing in many different states. On average, we see that notice filings in total tend to cost issuers about \$13,000. Keep in mind that some states' filing costs range from \$0 in Pennsylvania and Indiana all the way to over \$1,000 in Maine.

There are also a number of states that have a variable fee. This fee depends upon the number of sales you authorize in that state. Unless you have tested the waters and built financial models, it's very difficult to tell how much you'll generate in sales.

The task of measuring the sales of your offering does not stop after notice filing. You must also continue to track your sales throughout your selling period to monitor and ensure that your sales do not exceed the amount you've been authorized by the state. This is especially important in variable states that impose penalties if you sell over your authorized amount of sales, however you can update the authorized sales figure with an additional notice filing.

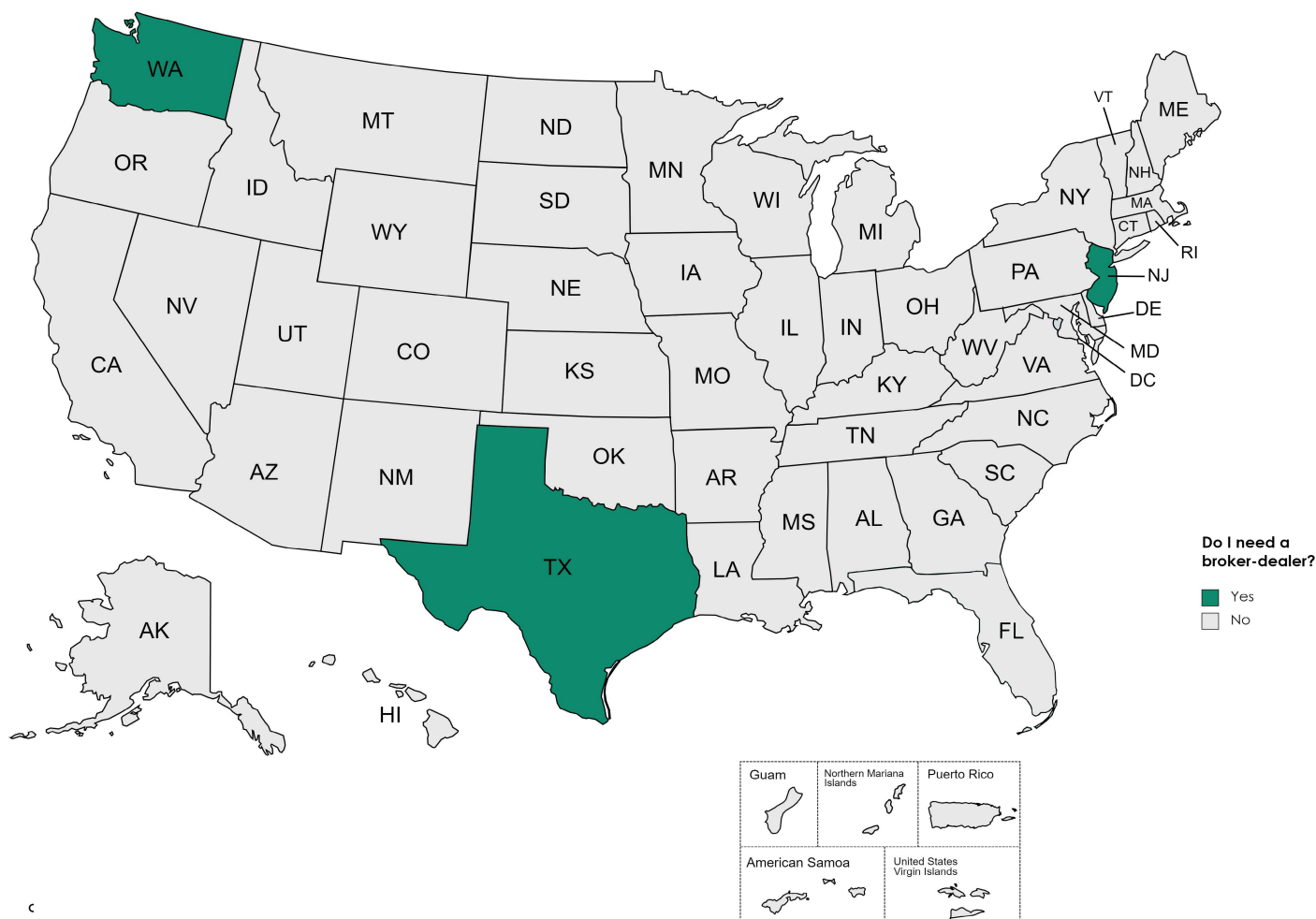


How Do I Submit My Notice Filing?

The method of submitting notice filings differs from state to state. Some states, like California, may have their own electronic portals for issuers to upload their notice filings. A large number of states use NAASA's Electronic Filing Delivery to file. Other states like Tennessee, Ohio and others require manual paper filing. In this case, you need to be aware of how long it can take to process these filings in comparison to states with electronic systems.

New York is a state that takes a different approach to filing. The state regulates the issuers rather than the offering itself. Filings are effective for four years rather than one and New York-based issuers are not required to submit certain filings.

While this overview is helpful for understanding baseline requirements in different states, requirements can be more complicated on a state-by-state basis. Be sure to do in-depth research on the more nuanced states.



Do I Need a Broker-Dealer?

A broker-dealer is a person or firm responsible for buying and selling securities on behalf of its clients. A broker-dealer may either sell its own products or those of a client. Because a broker-dealer may sell its own securities, some firms apply to become a broker-dealer for themselves so that they may complete their own transactions, but this approach to compliance is becoming increasingly challenging.

The states of New Jersey, Texas and Washington currently require a broker-dealer to be appointed for securities transactions, such as selling Reg A, Tier 2 offerings. Whilst notice filings are a large part of Blue Sky requirements for Reg A issuers, they are not the only aspect that needs to be considered, as broker-dealer requirements demonstrate.



GET REG A, TIER 2 SUPPORT TODAY

Ensuring constant compliance for your Reg A, Tier 2 offering can be overwhelming. Don't run the risk of state penalties for improperly managed offerings.

Agile Legal is ready to guide you through the compliance process and make sure you have everything you need to start selling.

Order Blue Sky Compliance Services today >