BIERCE & KENERSON P.C.

SEC Rules on Private Offerings: An Abbreviated Compendium

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1. OVERVIEW

This document introduces you to private equity in the United States, with a focus on text from official SEC resources. *EDITORIAL NOTE*: The text in **Times New Roman font** is quoted from the SEC. Our comments are generally limited to the introductory paragraphs.

1.1 Anti-Fraud Protections under Federal Law and State "Blue Sky" Laws

Securities laws and regulations are designed to protect the investor against fraud and help avoid investing in ventures that are inappropriate for a particular investor. The Securities Act of 1933 and the Securities and Exchange Act of 1934 are the primary federal securities laws. States retain regulatory authority under Article X of the Constitution, unless pre-empted by federal law. Each state has its own laws but may adopt uniform laws under the North American Securities Administrators' Association.

1.1.1 Registration; Disclosure; SEC Review

The general design is to require registration of "public offerings" with extensive disclosures. Where registration is required, the SEC may require more or less disclosure, depending on the particular offering and whether it is statutorily exempted. Under the 2012 JOBS Act, "emerging growth companies" (with inflation-adjusted revenues under $1.0 billion) are thus exempt from certain disclosures, may disclose less under the normal categories (e.g., 2 years of audited financial statements) and may submit their registration disclosure statements to the SEC for confidential internal review and comments.

1.1.2 Exemptions from Registration and Disclosure

Under delegated authority, the U.S. Securities and Exchange Commission has adopted various rules that exempt issuers, broker-dealers and investment advisors from registration of securities offerings under limited circumstances. The key to such exemptions is to limit private offerings to "accredited investors" (as well as others such as qualified institutional buyers) with limited amounts of capital raised in any 12-month period.

1.1.3 Enforcement

Both federal and state authorities have jurisdiction to enforce violations. Class actions are permitted in federal courts to protect thousands of smaller investors from minor violations that add up to big amounts. While most states require proof of materiality and scienter (knowledge of the misrepresentation), the New York Martin Act does not.[1]

1.2 JOBS ACT 2012

Congress enacted the Jumpstart Our Business Startups Act of 2012 ("JOBS Act"), which was signed into law by President Obama on April 5, 2012. [2] This law adopted the concept of "crowdfunding," but the SEC has restricted its use so as to be effectively incompatible with the normal rules of private equity for accredited investors.

[1] New York General Business Law, 352 (Martin Act), available at https://ag.ny.gov/sites/default/files/pdfs/bureaus/investor_protection/library/NY%20Gen%20Bus%20Law%20Article%2023-A.pdf.

[2] Pub. L. No. 112-106, 126 Stat. 306. For a complete text, see https://www.congress.gov/bill/112th-congress/house-bill/3606 or the "print" version of the "enrolled" bill at https://www.gpo.gov/fdsys/pkg/BILLS-112hr3606enr/pdf/BILLS-112hr3606enr.pdf. .

1.3 SEC Resources

This compendium on private placements quotes from resources provided by the U.S. Securities and Exchange Commission. The SEC website (www.sec.gov) contains a wealth of information. Under Corporate Finance, you can find "Fast Answers" which provide you with a summary of some of the most requested information. Below are reprints of its sections on Rules 504 and 506 of Regulation D.

1.4 Foreign Startups using Regulation D Directly

The SEC's statistics on the use of Regulation D show that most private placements are issued by companies based in technology hubs in the West Coast, Texas, East Coast.

However, foreign companies use U.S. private equity markets as well.

With regard to the geographical location of issuers, Form D filings indicate that during the period 2009-2015, most Rule 504 and Rule 505 issuers had their principal place of business in California (22% and 21%), followed by Texas, New York, Florida, Colorado and Illinois; most were incorporated in Delaware (19%, 23%), California (13%, 12%), Nevada and Texas. In addition, approximately 37% of Rule 504 offerings and 39% of Rule 505 offerings reported having different states of incorporation and principal places of business. While only approximately 2% of Rule 504 and Rule 505 offerings were initiated by foreign-incorporated issuers, a larger number of issuers (4-5%) reported their principal place of business to be outside the United States.[1]

1.5 U.S. Startups as Parent Companies Holding Foreign Startups ("Flips")

Even such statistics do not identify how many foreign companies fundraising in the United States are "masquerading" as U.S. entities. For many reasons, a foreign company might wish to convert its top holding company from a foreign entity to a U.S. entity in a tax-free "flip." As a result of a flip, the foreign company becomes a subsidiary of a new U.S. company. This somersault is generally driven by the availability of more angel funding and venture capital in the U.S. When this transposition occurs, care should be taken to avoid the loss of foreign governmental incentives for early-stage growth companies, such as R&D tax credits, subsidies for new market exploration, soft loans and tax-loss write-offs for bad investments.

1.6 "Carryover" Foreign Investors in U.S. Issuers

Serial entrepreneurs have become globally mobile. In some cases, a foreign entrepreneur initiates a startup and fails to gain traction. One solution might be to set up a new U.S. business for such operations, hoping that the marketplace will be more advantageous than in the foreign market. Another solution might be to set up a U.S. business for a different commercial activity (a "pivot"), but make promises to "carryover" foreign investors in the failed foreign business that they can get warrants to own shares in the new U.S. business. A third solution combines both such situations.

Such situations can spell trouble for all parties due to dilution, pivoting, loss of synergy and failure of the founders to transition at least some operations and some leadership to the United States.

[1] SEC Release Numbers 33-10238; 34-79161; File No. S7-22-15 RIN 3235-AL80, *Exemptions to Facilitate Intrastate and Regional Securities Offerings*, available at https://www.sec.gov/rules/final/2016/33-10238.pdf, at page 97.

Conversely, the integration of foreign investors with American investors can work smoothly only certain conditions:

- The founders and their legal counsel must pay careful attention to tax and securities laws in both countries.

- The U.S. investors must know about the foreign investors, and vice versa, before the transactions are structured and documented.

- The “drag” (dilution) of the U.S. private offering that must be allocated to the foreign investors must be limited. If excessive, such dilution must come from the ownership of the foreign founder, since U.S. private equity investors – angels and VC’s – insist on their piece of the whole pie without regard to the portion allocated to founders and other investors. If the founders lose majority control, the operation may lose a captain, and become rudderless.

- The new U.S. entity should not have pivoted too much from the original operations that were supported by prior investors. The prior investors need to take some dilution since they lost the gamble in the initial startup, and finding new U.S. investors will be complicated and more risky if the prior failed deal has not been “written down” and its value seriously discounted.

Private equity investors should pay careful attention to such dilution and pivot risks when considering investments in startups that have any legacy investors or legacy investment.

2. Regulation D

2.1 General Resources

This link sends you to complete index of the rules under Regulation D. Link Source: http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=c630c186097f47868d39b8fa51fea212&r=PART&n=17y3.0.1.1.12#se17.3.230_1501

2.2 Overview of Regulation D: SEC’s Warning to Investors

SEC warns investors by describing how the Reg. D exemptions apply. Here is the IRS Bulletin to Investors from Sept. 24, 2014.[1]

Investor Bulletin

INVESTOR BULLETIN: PRIVATE PLACEMENTS UNDER REGULATION D
09/24/2014

[1] SEC, *Investor Bulletin: Investor Bulletin: Private Placements Under Regulation D* (Sept. 24, 2014), available at https://www.investor.gov/additional-resources/news-alerts/alerts-bulletins/investor-bulletin-private-placements-under

The SEC's Office of Investor Education and Advocacy is issuing this Investor Bulletin to educate investors about investing in unregistered securities offerings, or private placements, under Regulation D of the Securities Act.

What is a private placement?

A securities offering exempt from registration with the SEC is sometimes referred to as a *private placement* or an *unregistered offering*. Under the federal securities laws, a company may not offer or sell securities unless the offering has been registered with the SEC or an exemption from registration is available.

Generally speaking, private placements are not subject to some of the laws and regulations that are designed to protect investors, such as the comprehensive disclosure requirements that apply to registered offerings. Private and public companies engage in private placements to raise funds from investors. Hedge funds and other private funds also engage in private placements.

As an individual investor, you may be offered an opportunity to invest in an unregistered offering. You may be told that you are being given an exclusive opportunity. The opportunity may come from a broker, acquaintance, friend or relative. You may have seen an advertisement regarding the opportunity. The securities involved may be, among other things, common or preferred stock, limited partnerships interests, a membership interest in a limited liability company, or an investment product such as a note or bond. ***Keep in mind that private placements can be very risky and any investment may be difficult, if not virtually impossible to sell.***

Red flags. Fraudsters may use unregistered offerings to conduct investment scams. See our Investor Alert about red flags to watch out for in an unregistered offering.

Unregistered offerings often can be identified by capitalized legends placed on the offering documents and on the certificates or other instruments that represent the securities. The legends will state that the offering has not been registered with the SEC and the securities have restrictions on their transfer. You should read the offering documents carefully to understand the risks involved.

What is Regulation D?

When reviewing private placement documents, you may see a reference to *Regulation D*. Regulation D includes three SEC rules—*Rules 504*, *505* and *506*—that issuers often rely on to sell securities in unregistered offerings. The entity selling the securities is commonly referred to as the *issuer*. Each rule has specific requirements that the issuer must meet**.** ***If you have reason to believe that an unregistered offering claiming to rely on one of these rules does not satisfy the applicable requirements, consider this a red flag about the investment.***

Rule 504

Rule 504 permits certain issuers to offer and sell up to $1 million of securities in any 12-month period. ***These securities may be sold to any number and type of investor, and the issuer is not subject to specific disclosure requirements.*** Generally, securities issued under Rule 504 will be *restricted securities* (as further explained below), unless the offering meets certain additional requirements. As a prospective investor, you should confirm with the issuer whether the securities being offered under this rule will be restricted.

Rule 505

Under Rule 505, issuers may offer and sell up to $5 million of their securities in any 12-month period. There are limits on the types of investors who may purchase the securities. The issuer may sell to an unlimited number of *accredited investors*, but to no more than 35 non-accredited investors. If the issuer sells its securities to non-accredited investors, the issuer must disclose certain information about itself, including its financial statements. If sales are made only to accredited investors, the issuer has discretion as to what to disclose to investors. Any information provided to accredited investors must be provided to non-accredited investors.

Accredited investor. An individual will be considered an *accredited investor* if he or she:
earned income that exceeded $200,000 (or $300,000 together with a spouse) in each of the prior two years, and reasonably expects the same for the current year, ***OR***
has a net worth over $1 million, either alone or together with a spouse (excluding the value of the person's primary residence and any loans secured by the residence (up to the value of the residence)).

Rule 506

An unlimited amount of money may be raised in offerings relying on one of two possible Rule 506 exemptions. Similar to Rule 505, an issuer relying on Rule 506(b) may sell to an unlimited number of accredited investors, but to no more than 35 non-accredited investors. However, unlike Rule 505, the non-accredited investors in the offering must be financially sophisticated or, in other words, have sufficient knowledge and experience in financial and business matters to evaluate the investment. This sophistication requirement may be satisfied by having a *purchaser representative* for the investor who satisfies the criteria. An investor engaging a purchaser representative should pay particular attention to any conflicts of interest the representative may have.

As with a Rule 505 offering, if non-accredited investors are involved, the issuer must disclose certain information about itself, including its financial statements. If selling only to accredited investors, the issuer has discretion as to what to disclose to investors. Any information provided to accredited investors must be provided to non-accredited investors.

General advertising. Issuers relying on the Rule 506(c) exemption can generally advertise their offerings. As a result, you may see an investment opportunity advertised through the Internet, social media, seminars, print, or radio or television broadcast. ***Only accredited investors, however, are allowed to purchase in a Rule 506(c) offering that is widely advertised, and the issuer will have to take reasonable steps to verify your accredited investor status.***

What should you do before investing?

Private placements may be pitched as a unique opportunity being offered to only a handful of investors, including you. Be careful. Don't be fooled by this high-pressure sales tactic. Even if the deal is "unique," it may not be a good investment. ***It is important for you to obtain all the information that you need to make an informed investment decision.*** In fact, issuers relying on the Rule 505 and 506(b) exemptions from registration must provide non-accredited investors an opportunity to ask questions and receive answers regarding the investment. If an issuer fails to adequately answer your questions, consider this a warning against making the investment.

Unlike registered offerings in which certain information is required to be disclosed, investors in private placements are generally on their own in obtaining the information they need to make an informed investment decision. Investors need to fully understand what they are investing in and fully appreciate what risks are involved.

Some things to consider.
What do the financial statements, if provided, tell you about the business?
Are the claims and expectations reasonable?
How reasonable is the issuer's reliance on a particular technology, customer, product or natural resources claim?
Who are the issuer's competitors?
What is the experience and background of management?
How long has the issuer been in business and has the issuer conducted prior offerings?
How does the issuer plan to use the money raised?
If the securities you are investing in have transfer restrictions, when will and how may the restrictions be lifted?
Because you may not be able to resell your investment easily, are you comfortable holding it indefinitely?

In practice, issuers often provide a document called a *private placement memorandum* or *offering memorandum* that introduces the investment and discloses information about the securities offering and the issuer. However, this document is not required and the absence of this document or similar disclosure may be a red flag to consider before investing. ***Moreover, private placement memoranda typically are not reviewed by any regulator and may not present the investment and related risks in a balanced light.***

All issuers relying on a Regulation D exemption are required to file a document called a Form D no later than 15 days after they first sell the securities in the offering. The Form D will include brief information about the issuer, its management and promoters, and the offering itself. If the offering you are considering has prior sales, you can search for the Form D filing on the SEC's website at sec.gov/edgar/searchedgar/webusers.htm.

Form D is not registration. Fraudsters may try to lure you into investing with them by falsely claiming to be registered, or that the offering is registered, with the SEC. In a recent case, *SEC v. Fleet Mutual Wealth*, the SEC obtained a federal court order freezing stolen investor money. The SEC alleged that the defendants falsely promised investors guaranteed returns of 2%-3% per week through the use of a high frequency trading strategy, but instead used investors' money to operate a pyramid scheme. The defendants allegedly recruited investors by falsely claiming that their firm was "registered" or "duly registered" with the SEC and pointing to the firm's Form D filings to support this misrepresentation.

What if my broker recommends the investment?

If your broker recommends the investment, you should know that your broker, along with his or her firm, has a duty to conduct a reasonable investigation of the investment and the issuer's representations about it. The scope of the investigation depends on the circumstances of the investment, including its complexity and the risks involved. For example, the private placement of shares by a large public company may warrant less investigation than a start-up with little or no track record. Generally, a broker should not just rely blindly on the issuer for information but should separately investigate and verify an issuer's statements and claims. If your broker is recommending the investment and fails to satisfy its duties to investigate the issuer and the offering, this failure could constitute a violation of the antifraud provisions as well as other federal securities laws.

In addition, your broker must determine whether an investment in the private placement is *suitable* for you. This means your broker will have to consider factors such as your age, financial situation, current and future needs, investment objectives and tax status.

Your broker's duties, however, should not substitute for your own judgment in making the investment. ***Your broker can assist and enable you to better understand the opportunity and risks, as well as investigate and gather additional information, but it is your money, your risk and your decision whether to invest.*** You should also ask about the compensation your broker is receiving for the transaction and any relationships, business ties or other conflicts of interest that may exist between your broker and the issuer.

Brokers' misconduct. In *SEC v. Provident Royalties, LLC*, Provident allegedly raised $485 million through various unregistered offerings from at least 7,700 investors nationwide, promising high returns and misrepresenting how investor funds would be used. In a separate case, the Financial Industry Regulatory Authority (FINRA)—a body that regulates brokers—sanctioned a number of brokers involved in the offerings for selling securities without having a reasonable basis for recommending the securities.

In another case, *In the Matter of Advanced Equities, Inc.*, the SEC charged a broker with allegedly making exaggerated misstatements to investors when pitching an unregistered offering of securities in a non-public alternative energy company. The SEC alleged, for example, that the broker said the company had more than $2 billion in order backlogs when the backlog never exceeded $42 million.

Investment advisers. *Investment advisers* are subject to different duties than brokers. Investment advisers have a fiduciary duty to act in the best interests of their clients. The background and qualifications of an investment adviser registered with the SEC are available through the Investment Adviser Public Disclosure website.

What should I know about restricted securities?

Generally, most securities that you acquire in a private placement will be *restricted securities*. ***You should not expect to be able to easily and quickly resell your restricted securities. In fact, you should expect to hold the securities indefinitely.***

There are two principal things to think about before buying restricted securities. The first is that unless you have made arrangements with the issuer to resell your restricted securities as part of a registered offering, you will need to comply with an exemption from registration to resell. One *rule* commonly relied upon to resell requires you to hold the restricted securities for at least a year if the company does not file periodic reports (such as annual and quarterly reports) with the SEC. You may wish to hire an attorney to help you comply with the legal requirements to resell restricted securities. Issuers may require a legal opinion that you satisfy an exemption to resell your restricted securities.

The second thing to think about is whether they are easy to sell. This issue primarily affects the sale of restricted securities in private companies. Information about a private company is not typically available to the public, and a private company may not provide information to you or your buyer. The restricted status of your securities may also transfer to your buyer. For these reasons, it may be difficult to attract buyers.

In addition to these considerations, specific contractual restrictions that you may enter into when investing may prevent you from freely transferring the securities.

What else should I know?

Despite not being subject to the same disclosure obligations as registered offerings, private placements are subject to the antifraud provisions of the federal securities laws. Any information provided must be true and may not omit any material facts necessary to prevent the statements made from being misleading. ***You should be aware that it may be difficult or impossible to*** recover ***the money you invest in an offering that turns out to be fraudulent.*** In addition, even though the offering may be exempt from SEC registration, the offering may have to separately comply with state securities laws, including state registration requirements or a state exemption from registration.

Background check. It is always a good idea to check on the background of an investment professional. It is easy and free. Details of an investment professional's background and qualifications are available through the Investment Adviser Public Disclosure website and FINRA's BrokerCheck. If you have any questions on checking the background of an investment professional, call the SEC's toll-free investor assistance line at (800) 732-0330. You can also check with your state securities regulator regarding the person soliciting your investment.

Private placements may offer great opportunity. However, the attractive potential rewards often come with high risks of loss.

2.3 "Accredited Investor": Angels from Heaven

The definition of "accredited investor" is found in the SEC regulations.[1] Accredited investors are commonly called business angels. Angel investors tend to invest earlier than Venture Capital funds.

According to a 2012 academic study, VCs appear to focus on scale or potential for scale rather than short-term profitability in their selection of targets, and firms that receive VC financing tend to be significantly larger than non-VC firms, based on employment and sales. According to a recent report, angel investments amounted to $24.1 billion in 2014, with approximately 73,400 entrepreneurial ventures receiving angel funding and approximately 316,600 active angel investors. In 2014, angel investments were concentrated in software, healthcare, and IT services. The average angel deal size was approximately $328,500. Seed/startup stage deals accounted for 25% and early stage deals accounted for 46%. 1283 As suggested by an academic study, angel investors tend to invest in younger companies than VCs.[2]

2.3.1 Definition under 17 C.F.R. § 501

In short, an accredited investor is a person, or a trust or holding company for persons, who meet tests for assets and /or income.

As used in Regulation D (§230.500 *et seq.* of this chapter), the following terms shall have the meaning indicated:

(a) *Accredited investor. Accredited investor* shall mean any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:

[1] 17 C.F.R. 230.501, " What is an "Accredited Investor?": §230.501 Definitions and terms used in Regulation D, published at 81 Fed. Register 83553 (Nov. 21, 2016), amending Regulation D to eliminate Rule 505 and make corresponding adjustments, http://www.ecfr.gov/cgi-bin/text-idx?SID=c630c186097f47868d39b8fa51fea212&mc=true&node=20161121y1.42

[2] SEC, Final Rule, Crowdfunding, page 368, available at https://www.sec.gov/rules/final/2015/33-9974.pdf. [Footnotes omitted.]

(1) Any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any insurance company as defined in section 2(a)(13) of the Act; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of $5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

(2) Any private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;

(3) Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5,000,000;

(4) Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;

(5) Any natural person whose individual net worth, or joint net worth with that person's spouse, exceeds $1,000,000.

(i) Except as provided in paragraph (a)(5)(ii) of this section, for purposes of calculating net worth under this paragraph (a)(5):

> (A) The person's primary residence shall not be included as an asset;
>
> (B) Indebtedness that is secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time of the sale of securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of sale of securities exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and
>
> (C) Indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the primary residence at the time of the sale of securities shall be included as a liability;

(ii) Paragraph (a)(5)(i) of this section will not apply to any calculation of a person's net worth made in connection with a purchase of securities in accordance with a right to purchase such securities, provided that:

> (A) Such right was held by the person on July 20, 2010;

(B) The person qualified as an accredited investor on the basis of net worth at the time the person acquired such right; and

(C) The person held securities of the same issuer, other than such right, on July 20, 2010.

(6) Any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(7) Any trust, with total assets in excess of $5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in §230.506(b)(2)(ii); and

(8) Any entity in which all of the equity owners are accredited investors.

2.3.2 Other Sources on "Accredited Investor"

You can use either of the links below for further consideration of the definition of Accredited Investor

- This link is only for the definition Link Source: http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=8edfd12967d69c024485029d968ee737&r=SECTION&n=17y3.0.1.1.12.0.46.176

- *Investor Bulletin – What does it mean to be an accredited investor?(23 March, 2013). See the link below for a SEC Investor Bulletin to help you determine whether you qualify:* Link Source: https://www.investor.gov/additional-resources/news-alerts/alerts-bulletins/investor-bulletin-accredited-investors

2.4 Rule 504

2.4.1 Overview (per SEC)

SEC website, Dec. 2, 2009, https://www.sec.gov/fast-answers/answers-rule504.html

Rule 504 of Regulation D provides an exemption from the registration requirements of the federal securities laws for some companies when they offer and sell up to $1,000,000[1] of their securities in any 12-month period.

A company can use this exemption so long as it is not a blank check company and does not have to file reports under the Securities Exchange Act of 1934. Also, the exemption generally does not allow companies to solicit or advertise their securities to the public, and purchasers receive "restricted" securities, meaning that they may not sell the securities without registration or an applicable exemption.

Rule 504 does allow companies to solicit or advertise their securities to the public and to sell securities that are not restricted, if one of the following circumstances is met:

- The company registers the offering exclusively in one or more states that require a publicly filed registration statement and delivery of a substantive disclosure document to investors;

[1] This amount is now $5,000,000 under revised Rule 504 as adopted in 2016.

- A company registers and sells the offering in a state that requires registration and disclosure delivery and also sells in a state without those requirements, so long as the company delivers the disclosure documents required by the state where the company registered the offering to all purchasers (including those in the state that has no such requirements); or
- The company sells exclusively according to state law exemptions that permit general solicitation and advertising, so long as the company sells only to "accredited investors."

Even if a company makes a private sale where there are no specific disclosure delivery requirements, a company should take care to provide sufficient information to investors to avoid violating the antifraud provisions of the securities laws. This means that any information a company provides to investors must be free from false or misleading statements. Similarly, a company should not exclude any information if the omission makes what is provided to investors false or misleading.

Companies relying on the Rule 504 exemption do not have to register their offering of securities with the SEC, but they must file what is known as a "Form D" electronically with the SEC after they first sell their securities. Form D is a brief notice that includes the names and addresses of the company's promoters, executive officers and directors, and some details about the offering, but contains little other information about the company. If you are thinking about investing in a Regulation D offering, you should access the EDGAR database to determine whether the company has filed Form D.

You should always check with your state securities regulator to see if it has more information about the company and the people behind it. Be sure to ask whether your state regulator has cleared the offering for sale in your state. You can get the address and telephone number for your state securities regulator by calling the North American Securities Administrators Association at (202) 737-0900 or by visiting its website . You'll also find this information in the state government section of your local phone book.

For more information about the SEC's registration requirements and common exemptions for small businesses raising capital, read our brochure, Small Business & the SEC. For more information about Regulation D offerings as an investor, see our Investor Bulletin.

2.4.2 SEC's Small Entity Compliance Guide

On January 20, 2017,[1] the SEC updated its compliance guide, which is quoted below. The footnotes follow the end of the quoted text.

1. Overview

Rule 504 of Regulation D provides an exemption from registration under the Securities Act of 1933 for the offer and sale of up to $5,000,000 of securities in a 12-month period.[2]

2. Eligibility

The following companies are not eligible to use the Rule 504 exemption:

- companies that already are Exchange Act reporting companies;
- investment companies;

[1] *The Investor Bulletin on Rule 504: Rule 504 of Regulation D: A Small Entity Compliance Guide for Issuers*[1], available at: https://www.sec.gov/divisions/corpfin/guidance/rule504-issuer-small-entity-compliance.htmld

- companies that have no specific business plan or have indicated their business plan is to engage in a merger or acquisition with an unidentified company or companies; and
- companies that are disqualified under Rule 504's "bad actor" disqualification provisions.

3. Form D Notice

A company conducting an offering under Rule 504 (an "issuer") is required to file a notice with the Commission on Form D within 15 days after the first sale of securities in the offering. The Commission does not charge any fee to file or amend a Form D. For more information on filing and amending a Form D, please see the resources referenced at the end of this guide.

4. General Prohibition on General Solicitation and Issuance of Restricted Securities

In general, issuers relying on Rule 504 may not use general solicitation or advertising to market the securities and purchasers will receive restricted securities.[3] Investors in such offerings should be informed that they may not be able to sell the securities for at least a year unless the issuer registers the resale transaction with the Commission.
General solicitation and advertising is permitted and investors receive non-restricted securities,[4] however, if the issuer offers and sells the securities:

- exclusively under one or more state laws that require registration, public filing and delivery to investors of a substantive disclosure document before sale;
- in one or more states that do not have a provision requiring registration, public filing and delivery of a disclosure document before sale, so long as: the securities have been registered in at least one other state that provides for such registration, public filing and delivery before sale; the issuer offers and sells securities in that other state under those provisions; and the issuer delivers to all purchasers in any state the disclosure documents mandated by the state in which it registered the securities; or
- exclusively in a state according to an exemption in such state that permits general solicitation and advertising, so long as sales are made only to "accredited investors."[5]

5. Bad Actor Disqualification

Rule 504 offerings are subject to the disqualification provisions found in Rule 506 of Regulation D. The "bad actor" disqualification provisions disqualify offerings from relying on Rule 504 if the issuer or other "covered persons" have experienced a disqualifying event, such as being convicted of, or sanctioned for, securities fraud or other violations of specified laws.

Covered Persons
Understanding the categories of persons that are covered is important because issuers are required to conduct a factual inquiry to determine whether any covered person has had a disqualifying event, and the existence of such an event will generally disqualify the offering from reliance on the Rule 504 exemption.

"Covered persons" include:

- the issuer, including its predecessors and affiliated issuers;
- directors, officers, general partners or managing members of the issuer;
- beneficial owners of 20% or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power;
- promoters connected with the issuer in any capacity at time of sale; and

- persons compensated for soliciting investors, including the general partners, directors, officers or managing members of any such solicitor.

Disqualifying Events
Disqualifying events include:

- Certain criminal convictions;
- Certain court injunctions and restraining orders;
- Certain final orders of certain state and federal regulators;
- Certain SEC disciplinary orders;
- Certain SEC cease-and-desist orders;
- Suspension or expulsion from membership in a self-regulatory organization (SRO), such as FINRA, or being barred from association with an SRO member;
- SEC stop orders and orders suspending the Regulation A exemption; and
- U.S. Postal Service false representation orders.

Many of these events are only disqualifying if they occurred during a look-back period (for example, a court injunction that was issued within the last five years or a regulatory order that was issued within the last ten years). The look-back period is measured by counting back from the date of sale of securities in the Rule 504 offering to the date of the potentially disqualifying event – for example, the issuance of the injunction or regulatory order and not the date of the underlying conduct that led to the disqualifying event.

Disqualification under Rule 504 will not arise as a result of disqualifying events relating to any conviction, order, judgment, decree, suspension, expulsion or bar that occurred before January 20, 2017, the effective date of the Rule 504 amendment that added disqualifications. Events that occurred prior to January 20, 2017 that are within the relevant look-back period and would otherwise be disqualifying are, however, required to be disclosed in writing to each purchaser.

Exceptions and Waivers
The rule provides an exception from disqualification when the issuer is able to demonstrate that it did not know and, in the exercise of reasonable care, could not have known that a covered person with a disqualifying event participated in the offering.

The specific steps an issuer should take to exercise reasonable care will vary according to particular facts and circumstances. An instruction to the rule states that an issuer will not be able to establish that it has exercised reasonable care unless it has made, in light of the circumstances, a factual inquiry into whether any disqualifications exist.

Disqualification under Rule 504 will not arise if, before any sales are made in the Rule 504 offering, the court or regulatory authority that entered the relevant order, judgment or decree advises in writing – whether in the relevant judgment, order or decree or separately to the Commission or its staff – that disqualification under the rule should not arise as a consequence of such order, judgment or decree.

The rule also provides for the ability to seek waivers from disqualification by the Commission upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

6. Relationship with State Securities Laws

Issuers must comply with state securities laws and regulations in the states in which securities are offered or sold. Each state's securities laws have their own registration requirements and exemptions to registration requirements. Issuers wishing to obtain information should contact state securities regulators in the states in which they intend to offer or sell securities for further guidance on compliance with state law requirements. Issuers may also obtain useful information on state securities law registration requirements and exemptions to registration requirements, including coordinated state review programs, by visiting the website of the North American Securities Administrators Association (NASAA) at www.nasaa.org.

7. Other Resources

The adopting release increasing the aggregate amount of securities that may be offered and sold under Rule 504 from $1 million to $5 million and applying bad actor disqualifications to Rule 504 offerings can be found on the SEC's website at https://www.sec.gov/rules/final/2016/33-10238.pdf.

Rule 504 (17 CFR 230.504) can be accessed through the "Corporation Finance" section of the SEC's website at http://www.sec.gov/divisions/corpfin/ecfrlinks.shtml.
For guidance on Form D, please see the following:

- A copy of Form D, including instructions to the form, is available at https://www.sec.gov/about/forms/formd.pdf;
- Form D Compliance Guide can be found on the SEC's website at https://www.sec.gov/info/smallbus/secg/formdguide.htm;
- Guidance on Form D Filing Process can be found on the SEC's website at https://www.sec.gov/divisions/corpfin/formdfiling.htm; and
- Guide to Definitions of Terms Used in Form D can be found on the SEC's website at https://www.sec.gov/info/smallbus/formddefinitions.htm.

Additional materials regarding the requirements of Rule 504, Regulation D and Form D are available at http://www.sec.gov/divisions/corpfin/cfguidance.shtml.
You can also submit complaints or tips about possible securities laws violations on the SEC's questions and complaints page at http://www.sec.gov/complaint.shtml.

8. Contacting the SEC Staff

The SEC staff is happy to assist with questions regarding Rule 504, Regulation D and Form D. You may contact the Division of Corporation Finance's Office of Small Business Policy online or by telephone at (202) 551-3460.

[1] This guide was prepared by the staff of the U.S. Securities and Exchange Commission (the "Commission") as a "small entity compliance guide" under Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, as amended. The guide summarizes and explains the rules adopted by the SEC, but is not a substitute for any rule itself. Only the rule itself can provide complete and definitive information regarding its requirements.
[2] On October 26, 2016, the Commission adopted amendments to Rule 504 that increase the aggregate amount of securities that may be offered and sold from $1 million to $5 million and apply bad actor disqualifications to Rule 504 offerings. These amendments were effective on January 20, 2017.
[3] Restricted securities are securities acquired in unregistered, private sales from the issuer or from an affiliate of the issuer and subject to the resale limitations of Regulation D. Under Rule 144, purchasers of restricted securities who are not affiliated with the issuer may not resell the securities until one year after the date of their original purchase from the issuer, unless the issuer has filed an effective resale registration statement covering the offer and sale of those securities or a valid Securities Act exemption is available. Under Rule 144, purchasers who are affiliated with the issuer are subject to a one-year holding

period before they may resell and thereafter volume limitations and manner of sale requirements for equity securities, unless the offer and sale is registered with the Commission. See Investor Publications: Rule 144: Selling Restricted and Control Securities.

[4] An investor that wishes to sell securities that are not restricted must either register the transaction or have an exemption for the transaction. An exemption commonly relied upon for the resale of the securities is Section 4(a)(1) of the Securities Act which is available to any person other than an issuer, underwriter or dealer. Regulation D's exemption from Securities Act registration is only available for offers and sales by an issuer of securities to initial purchasers; it is not available to any affiliate of the issuer or to any person for resales of the securities.

[5] In the context of a natural person, an accredited investor includes anyone who has: income that exceeded $200,000 (or $300,000 together with a spouse) in each of the prior two years, and reasonably expects the same for the current year, or has a net worth over $1 million, either alone or together with a spouse (excluding the value of the person's primary residence). Entities such as banks, partnerships, corporations, nonprofits and trusts may also be accredited investors. Depending on the circumstances, the following are examples of the types of entities that may be accredited investors: any trust, with total assets in excess of $5 million, not formed to specifically purchase the subject securities and whose purchase is directed by a sophisticated person, or any entity in which all of the equity owners are accredited investors. See Securities Act Rule 501 and Investor Bulletin: Accredited Investors.

2.5 Rule 505 (repealed 2016)

Rule 505 was repealed in 2016 when the SEC increased the maximum amount that could be raised under Rule 504 from $1.0 million to $5.0 million. Since Rule 505 had a maximum of $5.0 million, it became superfluous.

2.6 Rule 506

Unlike Rule 504, Rule 506 requires a private placement memorandum. With such additional details, the exemption from registration opens the door to investments by "sophisticated" non-accredited investors (Rule 506(b)) with no general solicitation, or an unlimited number of accredited investors can be solicited generally. [1]

Rule 506 of Regulation D is considered a "safe harbor" for the private offering exemption of Section 4(a)(2) of the Securities Act. Companies relying on the Rule 506 exemption can raise an unlimited amount of money. There are actually two distinct exemptions that fall under Rule 506.

2.6.1 Rule 506(b): No General Solicitation, Up to 35 Non-Accredited Investors

Under Rule 506(b), a company can be assured it is within the Section 4(a)(2) exemption by satisfying the following standards:

- The company cannot use general solicitation or advertising to market the securities;
- The company may sell its securities to an unlimited number of "accredited investors" and up to 35 other purchasers. Unlike Rule 505, all non-accredited investors, either alone or with a purchaser representative, must be sophisticated—that is, they must have sufficient knowledge and experience in financial and business matters to make them capable of evaluating the merits and risks of the prospective investment;

[1] SEC, *Rule 506 of Regulation D* (Jan. 16, 2013), available at https://www.sec.gov/fast-answers/answers-rule506htm.html

- Companies must decide what information to give to accredited investors, so long as it does not violate the antifraud prohibitions of the federal securities laws. But companies must give non-accredited investors disclosure documents that are generally the same as those used in registered offerings. If a company provides information to accredited investors, it must make this information available to non-accredited investors as well;
- The company must be available to answer questions by prospective purchasers; and
- Financial statement requirements are the same as for Rule 505.

2.6.2 Rule 506(c): General Solicitations, only for Accredited Investors

Under Rule 506(c),[1] a company can broadly solicit and generally advertise the offering, but still be deemed to be undertaking a private offering within Section 4(a)(2) if:

- The investors in the offering are all accredited investors; and
- The company has taken reasonable steps to verify that its investors are accredited investors, which could include reviewing documentation, such as W-2s, tax returns, bank and brokerage statements, credit reports and the like.

Purchasers of securities offered pursuant to Rule 506 receive "restricted" securities, meaning that the securities cannot be sold for at least a year without registering them.

Companies relying on the Rule 506 exemption do not have to register their offering of securities with the SEC, but they must file what is known as a "Form D" electronically with the SEC after they first sell their securities. Form D is a brief notice that includes the names and addresses of the company’s promoters, executive officers and directors, and some details about the offering, but contains little other information about the company. If you are thinking about investing in a Regulation D offering, you should obtain a copy of the company’s Form D available from the EDGAR database.

You should always check with your state securities regulator to see if it has more information about the company and the people behind it. Be sure to ask whether your state regulator has cleared the offering for sale in your state. You can get the address and telephone number for your state securities regulator by calling the North American Securities Administrators Association at (202) 737-0900 or by visiting its website. You’ll also find this information in the state government section of your local phone book.

For more information about the SEC’s registration requirements and common exemptions for small businesses raising capital, read our brochure, Small Business & the SEC. For more information about Regulation D offerings as an investor, see our Investor Bulletin.

3. Intrastate Offerings (for Investors in only One State)

In 2016, the SEC not only eliminated Rule 505, but added a new exemption for intra-state offerings. The final rule with comments is presented in 214 pages of text online.[2]

[1] Pursuant to Title II of the JOBS Act, the Commission adopted new paragraph (c) of Rule 506 of Regulation D, removing the prohibition on general solicitation or general advertising for securities offerings relying on Rule 506. See SEC Rel. No. 33-9415 (July 10, 2013).

[2] SEC Release Numbers 33-10238; 34-79161; File No. S7-22-15 RIN 3235-AL80, *Exemptions to Facilitate Intrastate and Regional Securities Offerings*, available at https://www.sec.gov/rules/final/2016/33-10238.pdf, at pages 8-9. Revised 17 CFR 230.147 (Rule 147) and new 17 CFR 230.147A (Rule 147A) will be effective on April 20, 2017.

3.1 Rule 147: Restrictions on Public Offers; Local Incorporation only

We are adopting amendments to modernize Rule 147 under the Securities Act of 1933, which provides a safe harbor for compliance with the Section 3(a)(11) exemption from registration for intrastate securities offerings. We are also establishing a new intrastate offering exemption under the Securities Act, designated Rule 147A, which will be similar to amended Rule 147, but will have no restriction on offers and will allow issuers to be incorporated or organized outside of the state in which the intrastate offering is conducted provided certain conditions are met. The amendments to Rule 147 and new Rule 147A are designed to facilitate capital formation, including through offerings relying upon intrastate crowdfunding provisions under state securities laws, while maintaining appropriate investor protections and providing state securities regulators with the flexibility to add additional investor protections they deem appropriate for offerings within their state.

…/…

Rule 147 reflects this Congressional intent and generally relies upon state regulation to effectively protect investors. Notwithstanding the importance of these limitations, due to developments in modern business practices and communications technology in the years since Rule 147 was adopted, we have determined that it is necessary to update the requirements of Rule 147 to ensure its continued utility.18

After considering the comments, we are amending Rule 147 to modernize the rule to incorporate most of our proposed amendments, except for the two proposed amendments that do not fit within the statutory limits of Section 3(a)(11) —allowing issuers to make offers accessible to out-of-state residents and to be incorporated out-of-state. These two provisions are the distinguishing features of the new Rule 147A exemption that we are establishing pursuant to our general exemptive authority under Section 28.[1]

3.2 Rule 147A: No Restrictions on Offers; Sales only to Local Residents

We are also establishing a new intrastate offering exemption under the Securities Act, designated Rule 147A, that will further accommodate modern business practices and communications technology and provide an alternative means for smaller companies to raise capital locally.[2]

We are adopting new Rule 147A pursuant to our general exemptive authority under Section 28 of the Securities Act,19 and therefore, new Rule 147A will not be subject to the statutory limitations of Section 3(a)(11). Accordingly, Rule 147A will have no restriction on offers, but will require that all sales be made only to residents of the issuer's state or territory to ensure the intrastate nature of the exemption. Rule 147A also will not require issuers to be incorporated or organized in the same state or territory where the offering occurs so long as issuers can demonstrate the in-state nature of their business, which we believe will expand the number of businesses that will be able to seek intrastate financing under Rule 147A, as compared to amended Rule 147. Certain provisions of existing Rule 147 concerning legends and mandatory disclosures to purchasers and prospective purchasers will apply to offerings conducted pursuant to amended Rule 147 and Rule 147A.20

3.3 Intrastate Offerings: Local Regulation; Bad Actors; Anti-Fraud

As in current Rule 147, nothing in either amended Rule 147 or new Rule 147A will obviate the need for compliance with any applicable state law relating to the offer and sale of securities. Thus, states will retain the flexibility to adopt requirements that are consistent with their respective interests in facilitating capital formation and protecting their resident investors in intrastate securities offerings, including the authority to

[1] Id., at page 11.
[2] Id., continuation at pages 8-9.

impose additional disclosure requirements regarding offers and sales made to persons within their state or territory, or the authority to limit the ability of certain bad actors from relying on applicable state exemptions. In addition, both federal and state antifraud provisions will continue to apply to offers and sales made pursuant to amended Rule 147 and new Rule 147A.

3.4 Instate Nature of Issuer's Business: "Principal Place of Business"

Instead of "principal office," amended Rule 147 and new Rule 147A will refer to the term "principal place of business" to mean the location from which the officers, partners, or managers of the issuer primarily direct, control and coordinate the activities of the issuer.69 We do not expect this change will significantly alter the scope of existing Rule 147 as we believe "principal place of business" is conceptually similar to principal office location. [1]

4. Crowdfunding

Crowdfunding was authorized under the JOBS Act, subject to SEC regulations. The SEC waited three years before issuing its regulations.[2]

Generally, issuers must choose whether to pursue crowd funding or Regulation D.

- Solicitations of investors under Regulation D are focused on private offerings under Section 4(2) of the '33 Act.

- In contrast, general solicitations (thus, quasi-public offerings) are permitted under the Crowdfunding Regulation that was created under Section 4(6) of the '33 Act as created under the 2012 JOBS Act. New "funding portal" intermediaries are required to provide services to the investors and to vet the investors to some degree to ensure that they are not totally unsuited for taking the risks in a risky startup company that has a more than 50% chance of going bankrupt.

The JOBS Act enacted new Section 4(a)(6) of the '33 Securities Act, as follows:[3]

SEC. 301. SHORT TITLE.
This title may be cited as the ''Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2012'' or the ''CROWDFUND Act''.

SEC. 302. CROWDFUNDING EXEMPTION.
(a) SECURITIES ACT OF 1933.—Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended by adding at the end the following:
''(6) transactions involving the offer or sale of securities by an issuer (including all entities controlled by or under common control with the issuer), provided that—

[1] Id, at page 23.

[2] Pursuant to Title III of the JOBS Act, the Commission adopted rules permitting companies to use the Internet to offer and sell securities through crowdfunding ("Regulation Crowdfunding"). See SEC Rel. No. 33-9974 (Oct. 30, 2015) "Regulation Crowdfunding Adopting Release"). Id at page 6. "Regulation Crowdfunding contains 685 pages of text and is available online at https://www.sec.gov/rules/final/2015/33-9974.pdf

[3] JOBS Act, Title III, available at https://www.gpo.gov/fdsys/pkg/BILLS-112hr3606enr/pdf/BILLS-112hr3606enr.pdf.

> ‘‘(A) the aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12- month period preceding the date of such transaction, is not more than $1,000,000;
> ‘‘(B) the aggregate amount sold to any investor by an issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12- month period preceding the date of such transaction, does not exceed—
>> ‘‘(i) the greater of $2,000 or 5 percent of the annual income or net worth of such investor, as applicable, if either the annual income or the net worth of the investor is less than $100,000; and
>> ‘‘(ii) 10 percent of the annual income or net worth of such investor, as applicable, not to exceed a maximum aggregate amount sold of $100,000, if either the annual income or net worth of the investor is equal to or more than $100,000;
>
> ‘‘(C) the transaction is conducted through a broker or funding portal that complies with the requirements of section 4A(a); and
> ‘‘(D) the issuer complies with the requirements of section 4A(b).’’

How many ways can you describe a new law? For simplicity of explanations, the SEC merely parrots the text of the JOBS Act:

To qualify for the exemption under Section 4(a)(6), crowdfunding transactions by an issuer (including all entities controlled by or under common control with the issuer) must meet specified requirements, including the following:

- the amount raised must not exceed $1 million in a 12-month period;
- individual investments in all crowdfunding issuers in a 12-month period are limited to:
  - the greater of $2,000 or 5 percent of annual income or net worth, if annual income or net worth of the investor is less than $100,000; and
  - 10 percent of annual income or net worth (not to exceed an amount sold of $100,000), if annual income or net worth of the investor is $100,000 or more; and
- transactions must be conducted through an intermediary that either is registered as a broker-dealer or is registered as a new type of entity called a “funding portal.” [1]

5. Regulation A (and “A+”)

Regulation A permits private placements for up to $50 million annually.[2]

The Securities and Exchange Commission today [March 25, 2015] adopted final rules to facilitate smaller companies’ access to capital. The new rules provide investors with more investment choices.

The new rules update and expand Regulation A, an existing exemption from registration for smaller issuers of securities. The rules are mandated by Title IV of the Jumpstart Our Business Startups (JOBS) Act.

[1] SEC, Regulation Crowdfunding, CFR Parts 200, 227, 232, 239, 240, 249, 269, and 274, Release Nos. 33-9974; 34-76324; File No. S7-09-13, RIN 3235-AL37, Final Rule, available at https://www.sec.gov/rules/final/2015/33-9974.pdf.

[2] Pursuant to Title IV of the JOBS Act, the Commission amended Regulation A in order to permit issuers to raise up to $50 million annually. See SEC Rel. No. 33-9741 (Mar. 25, 2015) (“2015 Regulation A Release”).

The updated exemption will enable smaller companies to offer and sell up to $50 million of securities in a 12-month period, subject to eligibility, disclosure and reporting requirements.

“These new rules provide an effective, workable path to raising capital that also provides strong investor protections,” said SEC Chair Mary Jo White. “It is important for the Commission to continue to look for ways that our rules can facilitate capital-raising by smaller companies.”

The final rules, often referred to as Regulation A+, provide for two tiers of offerings: Tier 1, for offerings of securities of up to $20 million in a 12-month period, with not more than $6 million in offers by selling security-holders that are affiliates of the issuer; and Tier 2, for offerings of securities of up to $50 million in a 12-month period, with not more than $15 million in offers by selling security-holders that are affiliates of the issuer. Both Tiers are subject to certain basic requirements while Tier 2 offerings are also subject to additional disclosure and ongoing reporting requirements.

The final rules also provide for the preemption of state securities law registration and qualification requirements for securities offered or sold to “qualified purchasers” in Tier 2 offerings. Tier 1 offerings will be subject to federal and state registration and qualification requirements, and issuers may take advantage of the coordinated review program developed by the North American Securities Administrators Association (NASAA).

The rules will be effective 60 days after publication in the Federal Register.[1]

6. About

We hope this information has been enjoyable as well as educational. Bierce & Kenerson, PC has experience in the dealings described to help create and grow your business. We invite your questions. For further information, please contact:

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DISCLAIMER: This information does not constitute legal advice. Consult a lawyer!

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[1] SEC, Press Release2015-49, SEC Adopts Rules to Facilitate Smaller Companies’ Access to Capital New Rules Provide Investors With More Investment Choices (March 25, 2015), available with fact sheet at https://www.sec.gov/news/pressrelease/2015-49.html.