

Table of Contents

Volume 7

CHAPTER 1. INTRODUCTION

I. EXEMPTED TRANSACTIONS IN PERSPECTIVE

A. SCOPE OF THE SECURITIES ACT OF 1933

- § 1:1 Overview
- § 1:2 Public Availability of SEC Interpretive Guidance, No-Action Letters, SEC Comment Letters and Issuer Responses
- § 1:3 Changes in statutory sections
- § 1:4 Recent Legislation and Executive Orders affecting Federal Securities Laws
- § 1:5 U.S. Government Bitcoin Reserve
- § 1:6 SEC Final Rules on Climate Change Risk Disclosures (2024)(Suspended & Abandoned 2025)

B. PERSONS SUBJECT TO REGISTRATION REQUIREMENTS

- § 1:7 Generally
- § 1:8 Issuer
- § 1:9 Affiliate of issuer
- § 1:10 Nonaffiliate of issuer
- § 1:11 Broker Dealers; Registration; Regulatory Focus
- § 1:12 Finders

C. EXEMPTIONS—SECURITIES VS. TRANSACTIONS

- § 1:13 Overview
- § 1:14 Definition of Securities
- § 1:15 SEC’s Framework for “Investment Contract” of Digital Assets (Cryptocurrencies)
- § 1:16 SEC Statement on Protocol Staking—Not a Regulated Security
- § 1:17 General exemptive authority

D. BURDEN OF PROOF

- § 1:18 Generally

E. SOURCE MATERIAL FOR UNDERSTANDING EXEMPTIONS

- § 1:19 Generally
- § 1:20 History of public availability
- § 1:21 Interpretative letters
- § 1:22 No-action letters

II. ORGANIZING TRANSACTIONAL EXEMPTIONS IN TERMS OF SELLER

- § 1:23 General—Summary of Transactional Exemptions

- § 1:24 Issuer
- § 1:25 —Limited by transactions
- § 1:26 —Limited by securities
- § 1:27 —Limited by type of issuer
- § 1:28 —Capital raising and other general business transactions
- § 1:29 Affiliate of issuer
- § 1:30 —Limited purpose exemptions
- § 1:31 —General purpose exemptions
- § 1:32 Non-affiliate of issuer
- § 1:33 —Limited purpose exemptions
- § 1:34 —General purpose exemptions
- § 1:35 Broker-dealer

III. SECTION 3(a)(1) IS RESERVED

- § 1:36 Current status
- § 1:37 Former Section 3(a)(1)

IV. OF HISTORICAL INTEREST: SUPERCEDED RULES AND STATUTORY PROVISIONS

- § 1:38 Rescinded Rule 234: Certain first lien notes: Section 3(b)
- § 1:39 —Original purpose and history
- § 1:40 —Securities exempted and limitations—Securities exempted
- § 1:41 — —Limitations on unpaid principal amount of indebtedness
- § 1:42 — —Limitation on offering
- § 1:43 —Evaluation
- § 1:44 Rescinded Rule 235: Securities of cooperative housing corporations: Section 3(b)
- § 1:45 —Original purpose
- § 1:46 —Limitations on issuer, limitations on securities, and limitation on offering price
- § 1:47 —Evaluation—Administrative interpretations
- § 1:48 — —Judicial opinion: United Housing Foundation, Inc. v. Forman
- § 1:49 Rescinded Rule 237: Resales of restricted securities by non-affiliates: Section 3(b)
- § 1:50 —Original purpose, history, and conditions
- § 1:51 —Securities exempted, manner of sale, amount exempted, notice provisions, and resales—Securities exempted
- § 1:52 — —Manner of sale
- § 1:53 — —Amount of securities exempted
- § 1:54 — —Notice provision
- § 1:55 — —Resales of securities sold under Rule 237
- § 1:56 Rescinded Rule 240: Securities offerings by certain closely held issuers: Section 3(b)
- § 1:57 —Purpose and conditions
- § 1:58 —Availability of exemptions, manner of offering, limitations, and filing of notice of sales—Availability of exemption
- § 1:59 — —Manner of offering
- § 1:60 — —Limitation on aggregate sales price
- § 1:61 — —Limitation on number of beneficial owners
- § 1:62 — —Limitation on resale
- § 1:63 — —Filing of notice of sales

TABLE OF CONTENTS

§ 1:64	Rescinded Rule 242: Limited offers and sales by qualified corporate issuers: Section 3(b)
§ 1:65	—Purpose and conditions
§ 1:66	—Availability of exemption, limitations, manner of offering, required disclosure, and filing of notice of sales—Availability of exemption
§ 1:67	— —Limitation on aggregate offering price
§ 1:68	— —Manner of offering
§ 1:69	— —Limitation on purchasers
§ 1:70	— —Required disclosure
§ 1:71	— —Limitation on resales
§ 1:72	— —Filing of notice of sales
§ 1:73	Rescinded Rule 257: Small offerings
§ 1:74	Rescinded Rule 148: Resales of securities issued under the Bankruptcy Act
§ 1:75	—Preliminary note
§ 1:76	—Definitions—Rule 148(a)
§ 1:77	—Securities issued under a plan—Rule 148(b)
§ 1:78	—Securities held in debtor’s portfolio—Rule 148(c)
§ 1:79	—Limited availability—Rule 148(d)
§ 1:80	—Nonexclusive rule—Rule 148(e)
§ 1:81	Rescinded Rule 144(k): Public and Private Resales by certain Non-affiliates
§ 1:82	Rescinded Rule 144(k): Public and Private Resales by Certain Non-affiliates—General Rule
§ 1:83	Rule 144(k) (Repealed and replaced with Rule 144(b)(1)): Public and Private Resales by Certain Non-affiliates—Non-affiliate Status
§ 1:84	Rescinded Rule 144(k): Public and Private Resales by Certain Non-affiliates—Two-year holding period—General rule
§ 1:85	— — —Tacking—no aggregation
§ 1:86	— — — —Tacking under Rule 144(d)(1)
§ 1:87	— — — —Specific Tacking provisions: Rule 144(d)(3)
§ 1:88	—Relationship to sales under Rule 144—Impact on non-affiliate sellers
§ 1:89	— —Impact on other persons
§ 1:90	—Restrictive legends
§ 1:91	Overview of Mortgage Loans
§ 1:92	Government-sponsored housing enterprises
§ 1:93	—FNMA and GNMA
§ 1:94	— —FNMA
§ 1:95	— —GNMA
§ 1:96	—FHLMC
§ 1:97	The private sector—In general
§ 1:98	—Resolution trust corporation
§ 1:99	Mortgage backed securities
§ 1:100	—Mortgage pass-through securities
§ 1:101	—Modified pass-through security: GNMA mortgage backed security
§ 1:102	—Senior-subordinate pass-through securities
§ 1:103	—Mortgage backed bonds
§ 1:104	—Mortgage pay-through securities
§ 1:105	—Collateralized mortgage obligations (CMOs) and real estate mortgage investment conduits (REMICs)
§ 1:106	—Other multiple class structures and derivative securities
§ 1:107	Rescinded Section 4(5): Overview

EXEMPTED TRANSACTIONS UNDER THE SECURITIES ACT OF 1933

- § 1:108 Real Estate Mortgage Notes: Section 4(5)(A)—Introduction
- § 1:109 Eligible securities
- § 1:110 Securities originated by banking institutions: Section 4(5)(A)(i)
- § 1:111 —Offeree-purchaser
- § 1:112 —Terms of sale
- § 1:113 Securities originated by HUD approved mortgagees: Section 4(5)(A)(ii)
- § 1:114 —Offeree-purchaser
- § 1:115 —Terms of sale
- § 1:116 Nonassignable Contracts for Real Estate Mortgage Notes: Section 4(5)(B)—Introduction
- § 1:117 Contracting parties
- § 1:118 Contracts
- § 1:119 Seller of securities under contract
- § 1:120 Purchaser of securities under contract
- § 1:121 Terms of sale
- § 1:122 Resale of Real Estate Mortgage Notes: Section 4(5)(C)—Generally
- § 1:123 Table—FNMA Mortgage Commitments
- § 1:124 —FNMA Mortgage Portfolio
- § 1:125 Chart—GNMA Mortgage Backed Securities Program
- § 1:126 Rescinded Regulation B: Overview
- § 1:127 —Conditions of exemption
- § 1:128 —Suspension of exemption
- § 1:129 Rescinded Regulation F: Overview
- § 1:130 —Conditions of exemption
- § 1:131 —Suspension of exemption
- § 1:132 Rescinded Rule 505 of Regulation D: Overview
- § 1:133 —Conditions of exemption
- § 1:134 Filing with the SEC—SEC Form ID and SEC EDGAR Filing Codes
- APPENDIX 1A. Summary of Exemptions for Private and Limited Securities Offering
- APPENDIX 1B. Agency Rule List and Webpage tracking SEC Rulemaking
- APPENDIX 1C. Summary of Types of Offerings Not Integrated Under the Safe Harbor and Fact Sheet for November 2, 2020 Changes to Private Offering Regime
- APPENDIX 1D. Testimony Before the United States House Appropriations Subcommittee on Financial Services and General Government by Paul S. Atkins, SEC Chairman; and Comments by SEC Chairman Paul S. Atkins before SEC Speaks
- APPENDIX 1E. Filing a Form D
- APPENDIX 1F. Williams Act
- APPENDIX 1G. SEC Disclosure Guidance Letters
- APPENDIX 1H. President Trump Executive Order: Strengthening American Leadership in Digital Financial Technology
- APPENDIX 1I. Public Alert: Unregistered Soliciting Entities (PAUSE)
- APPENDIX 1J. Presidential Executive Order
- APPENDIX 1K. Analysis of Regulation A+ Offerings from 2015-2024
- APPENDIX 1L. Study of Crowdfunding Use

CHAPTER 2. RECAPITALIZATIONS UNDER SECTION 3(a)(9)

I. INTRODUCTION

- § 2:1 Generally
- § 2:2 SEC Guidance and Interpretations
- § 2:3 Public disclosure policy

II. VARIOUS USES OF SECTION 3(a)(9)

- § 2:4 Introduction
- § 2:5 Reasons for an exchange
- § 2:6 —Compliance with contractual obligations
- § 2:7 —Elimination of outstanding securities
- § 2:8 —Revitalization of outstanding securities
- § 2:9 —Maintenance of control—Protection against take-overs
- § 2:10 — —Orderly transition of control
- § 2:11 —Correction of improperly issued securities
- § 2:12 —Reduction of number of outstanding securities
- § 2:13 —Settlement of litigation
- § 2:14 Method of exchange
- § 2:15 —Exchange offer
- § 2:16 —Exchange agreement
- § 2:17 — —Redemption agreement
- § 2:18 — —Charter or contract amendment
- § 2:19 — —Standby agreement
- § 2:20 Terms of exchange—Issuer’s discretion
- § 2:21 —Dissimilarity of securities

III. REQUIREMENTS FOR THE EXEMPTION

- § 2:22 Overview
- § 2:23 SEC Compliance and Disclosure Interpretations Section 3(a)(9)
- § 2:24 “Offer” or “sale” in a recapitalization
- § 2:25 Exchange of a “security”
- § 2:26 Relationship to Trust Indenture Act

IV. IDENTITY OF ISSUER

A. INTRODUCTION

- § 2:27 Generally

B. ORIGINAL ISSUER CHANGES LEGAL FORM

- § 2:28 Generally

C. ORIGINAL ISSUER DISAPPEARS IN REORGANIZATION

- § 2:29 Identifying the problem
- § 2:30 Method of organization
- § 2:31 Two-party merger of nonaffiliate: Assumption of obligations
- § 2:32 Merger of nonaffiliate into subsidiary of new issuer: Assumption of obligations

- § 2:33 Merger of affiliates—Introduction
- § 2:34 —Two-party merger
- § 2:35 —Three-party merger
- § 2:36 Nonmerger transactions between affiliates—Transfer of business assets to new entity: Dissolution by transferor
- § 2:37 —Dissolution of subsidiary: Parent assumes obligations

D. ORIGINAL ISSUER SURVIVES REORGANIZATION

- § 2:38 Introduction
- § 2:39 New equity securities—Share exchange
- § 2:40 —Multi-party merger
- § 2:41 —Reverse merger
- § 2:42 New debt securities

E. GUARANTEED OBLIGATIONS

1. Introduction

- § 2:43 Generally

2. Affiliates

- § 2:44 Guarantor and issuer as offerors
- § 2:45 Guarantor as offeror
- § 2:46 Issuer as offeror

3. Nonaffiliates

- § 2:47 Introduction
- § 2:48 Guarantees issued as part of merger
- § 2:49 Guarantees as part of exchange offer

F. VOTING TRUSTS

- § 2:50 Generally

G. BANKRUPTCY

- § 2:51 Generally

V. EXCLUSIVELY BY EXCHANGE

A. OVERVIEW

- § 2:52 No new consideration
- § 2:53 The rationale

B. WAIVER OF DIVIDENDS AND INTEREST

- § 2:54 Introduction
- § 2:55 General rule

C. SPECIAL ADMINISTRATIVE INTERPRETATIONS

- § 2:56 Generally
- § 2:57 Rule 149
- § 2:58 Rule 150

TABLE OF CONTENTS

§ 2:59 Revised Rule 152—Integration of Offerings Doctrine

D. SUMMARY

§ 2:60 Generally

VI. EXCLUSIVELY WITH SECURITY HOLDERS

§ 2:61 Generally

§ 2:62 Security holders

§ 2:63 Exclusively—Problem of integration

VII. ABSENCE OF REMUNERATION OR COMMISSIONS

A. GENERAL RULE

§ 2:64 Introduction

§ 2:65 Officers, directors, and employees

§ 2:66 Financial advisers, investor relations firms, and other outsiders

B. RISK TO ISSUER: A Rule 145 RECAPITALIZATION

§ 2:67 Generally

§ 2:68 Relationship between Section 3(a)(9) and Rule 145

§ 2:69 Proxy solicitation—Presence of remuneration or commission

VIII. RESALE OF SECURITIES ACQUIRED UNDER SECTION 3(a)(9)

A. INTRODUCTION

§ 2:70 Generally

B. WHERE UNRESTRICTED SECURITIES ARE SURRENDERED IN THE EXCHANGE

§ 2:71 Overview

§ 2:72 A discarded distinction: Public private transactions

§ 2:73 Non-American security holders—Transactions outside Rule 144

§ 2:74 —Transactions under Rule 144

C. WHERE RESTRICTED SECURITIES ARE SURRENDERED IN THE EXCHANGE: PROBLEM OF TACKING

§ 2:75 Introduction

§ 2:76 A discarded distinction: Public private transactions

§ 2:77 Present position

IX. COMPATIBILITY WITH STATE BLUE SKY LAW

§ 2:78 Generally

X. AN EVALUATION OF SECTION 3(a)(9)

§ 2:79 Generally

CHAPTER 3. REORGANIZATION WITH COURT OR AGENCY APPROVAL: SECTION 3(a)(10)

I. INTRODUCTION

- § 3:1 Elements of exemption
- § 3:2 Legislative history
- § 3:3 Impact of National Securities Markets Improvement Act of 1996

II. USE OF SECURITIES IN SETTLING LITIGATION

- § 3:4 Introduction to problem
- § 3:5 Exchange requirement
- § 3:6 —Any security
- § 3:7 —In exchange
- § 3:8 —Partly for cash
- § 3:9 —Nature of abandoned claims
- § 3:10 Transferor of securities
- § 3:11 —Where person distributing securities is issuer
- § 3:12 —Where person distributing securities is not issuer
- § 3:13 Judicial hearing and approval
- § 3:14 —Notice and opportunity to object
- § 3:15 —Hearing and approval
- § 3:16 —Scope of fairness: *SEC v. Blinder Robinson & Co.*
- § 3:17 — —Recommendations of counsel
- § 3:18 — —Scope of discovery record as indicator of adequate investigation of facts
- § 3:19 — —Apparent alternatives to settlement
- § 3:20 — —Nature and volume of responses from those receiving notice of hearing
- § 3:21 — —Opportunity for direct participation in process of obtaining full disclosure

III. REORGANIZATIONS AND ARRANGEMENTS OF FINANCIALLY TROUBLED BUSINESSES

A. INTRODUCTION

- § 3:22 Generally
 - 1. Special Federal Legislation
- § 3:23 Bankruptcy Code: Chapter 11
- § 3:24 —Legislative history
- § 3:25 —Chapter 11: A summary
- § 3:26 Bankruptcy Act of 1898: Chapters X and XI
 - 2. Role of SEC in Business Reorganizations Under the Bankruptcy Code
- § 3:27 Introduction
- § 3:28 Nature of SEC participation
- § 3:29 Bankruptcy Act: Chapters X and XI
 - 3. Exemptions From Registration: Section 364(f) and Section 1145
- § 3:30 Section 364(f)—Background

TABLE OF CONTENTS

§ 3:31	—The registration exemption
§ 3:32	Section 1145
	4. Relationship Between Section 3(a)(10) and Exemption in the Bankruptcy Code
§ 3:33	Generally
	5. Rehabilitations Outside the Bankruptcy Code and the Bankruptcy Act: Section 3(a)(10)
§ 3:34	Generally
	6. Disclosure Obligations
§ 3:35	Generally
B. EXCHANGE REQUIREMENT	
§ 3:36	Introduction
§ 3:37	Any security
§ 3:38	In exchange
§ 3:39	Partly for cash
§ 3:40	Nature of abandoned claims—In general
§ 3:41	—Claims created under Section 364
C. TRANSFEROR OF SECURITIES	
§ 3:42	Generally
§ 3:43	Transferor as debtor and issuer
§ 3:44	Transferor as issuer but not debtor
§ 3:45	—Affiliates
§ 3:46	—Nonaffiliates
§ 3:47	Transferor as debtor but not issuer
§ 3:48	Transferor as neither issuer nor debtor
§ 3:49	Transfers outside the Bankruptcy Act—Transferor as debtor and issuer
§ 3:50	—Transferor as issuer but not debtor
§ 3:51	—Transferor as debtor but not issuer
§ 3:52	—Transferor as neither issuer nor debtor
D. JUDICIAL HEARING	
§ 3:53	Generally
§ 3:54	Notice and opportunity to object
§ 3:55	Judicial review
IV. REORGANIZATIONS OF SOLVENT BUSINESSES	
A. INTRODUCTION	
§ 3:56	Scope of exemption
§ 3:57	Exchanges between affiliates
§ 3:58	Exchanges between nonaffiliates
B. EXCHANGE REQUIREMENT	
§ 3:59	Any security

- § 3:60 In exchange
- § 3:61 Partly for cash

C. TRANSFEROR OF SECURITIES

- § 3:62 Generally

D. NOTICE AND HEARING

1. Introduction

- § 3:63 Generally

2. Implementing Requirement for Hearing and Authorized Approval: Judicial Review

- § 3:64 Generally

3. Implementation of Requirements for Hearing and Authorized Approval: Agency Review

- § 3:65 Statutes modeled after Section 3(a)(10)
- § 3:66 Statutes containing requirements similar to those in Section 3(a)(10)
- § 3:67 Statutes authorizing an agency, but not mandating hearing
- § 3:68 Statutes that do not authorize governmental body, but fairness hearing is held
- § 3:69 Post-hearing modification of plan
- § 3:70 Summary
- § 3:71 —Need for express authorization
- § 3:72 —Form of express authorization
- § 3:73 —Content of express authorization
- § 3:74 —Need for hearing to be authorized
- § 3:75 —Need for fairness hearing

4. Determining Applicable Source of Express Authorization

- § 3:76 Generally

5. Notice of Fairness Hearing and Opportunity to Object

- § 3:77 Generally

6. Standard for Approval

- § 3:78 Generally

V. INTEGRATED OFFERINGS

- § 3:79 Generally

VI. RESALE OF SECURITIES ACQUIRED IN TRANSACTIONS EXEMPTED BY SECTION 3(a)(10) OR COMPARABLE PROVISIONS

- § 3:80 Introduction
- § 3:81 Status of securities—Restricted or nonrestricted
- § 3:82 Status of selling security holder
- § 3:83 Nature of resale transaction
- § 3:84 Resale after settlement of litigation

TABLE OF CONTENTS

- § 3:85 Resales under the Bankruptcy Code—Overview
- § 3:86 —Underwriter defined
- § 3:87 — —Sections 1145(b)(1)(A), (B), and (C)
- § 3:88 — —Section 1145(b)(1)(D)
- § 3:89 —Section 1145 exemptions—Resale of securities transferred under Section 1145(a)(1) or 1145(a)(2)
- § 3:90 — —Resale of securities transferred under Section 1145(a)(3)
- § 3:91 —Stockbroker exemptions—Under the Bankruptcy Code
- § 3:92 — —Outside the Bankruptcy Code
- § 3:93 Resales after combinations of financially sound businesses
- § 3:94 —Where nonrestricted securities are surrendered in exchange
- § 3:95 —Where restricted securities are surrendered in exchange

VII. SUMMARY AND EVALUATION OF EXEMPTION

- § 3:96 Generally

CHAPTER 4. INTRASTATE OFFERINGS UNDER SECTION 3(A)(11), RULE 147 AND RULE 147A

I. INTRODUCTION

- § 4:1 Elements and Comparison of the Federal Intrastate Exemption—Statutory and Safe Harbor Rules
- § 4:2 Differences between Rule 147, as amended, and Rule 147A
- § 4:3 The relevance of the mails and facilities of interstate commerce
- § 4:4 State Securities Law

II. TRANSACTIONS SUBJECT TO THE EXEMPTION

- § 4:5 Primary offerings—Introduction
- § 4:6 —Rule 147, as amended, and Rule 147A: An Overview
- § 4:7 —Underwriters
- § 4:8 Secondary offerings
- § 4:9 Simultaneous primary and secondary offerings

III. THE “PART OF AN ISSUE” CONCEPT: INTEGRATION

- § 4:10 Introduction
- § 4:11 Rule 147(g), as amended
- § 4:12 Evaluation of Rule 147(g) (Revised to Reference new Rule 152)

IV. NATURE OF ISSUER

A. PERSON RESIDENT: TRANSACTIONS OUTSIDE RULE 147, AS AMENDED

- § 4:13 Introduction
- § 4:14 Partnerships
- § 4:15 Trusts
- § 4:16 Underwriters
- § 4:17 Transfer agent
- § 4:18 Single business enterprise—Defining the problem—Resident and nonresident affiliates

- § 4:19 —Resident affiliates
- § 4:20 —Relationship with the “part of an issue” concept

B. PERSON RESIDENT: RULE 147(c)(1), AS AMENDED

- § 4:21 Generally

C. “DOING BUSINESS WITHIN” REQUIREMENT: TRANSACTIONS OUTSIDE RULE 147, AS AMENDED

- § 4:22 Introduction
- § 4:23 *Chapman v. Dunn*
- § 4:24 How long must issuer be doing business?—New businesses
- § 4:25 —Established businesses
- § 4:26 Staff interpretations—What is predominant?
- § 4:27 —Identifying business that must be predominant

D. DOING BUSINESS: SPECIAL PROBLEMS COMMON TO BOTH SECTION 3(a)(11) AND RULE 147, AS AMENDED

- § 4:28 Generally
- § 4:29 Shipping and marine ventures
- § 4:30 Railroad cars
- § 4:31 Motion pictures: Filming and distribution
- § 4:32 Investment businesses

E. DOING BUSINESS WITHIN: RULE 147(c)(2), AS AMENDED

- § 4:33 Introduction
- § 4:34 Staff interpretations
- § 4:35 —Subsection (c)(2)(i): Gross revenues
- § 4:36 —Subsection (c)(2)(ii): Total assets
- § 4:37 —Subsection (c)(2)(iii): Use of proceeds
- § 4:38 —Subsection (c)(2)(iv): Location of employees

V. RESIDENCE OF OFFEREEES AND PURCHASERS

A. TRANSACTIONS OUTSIDE RULE 147, AS AMENDED

- § 4:39 Introduction
- § 4:40 Individuals—Traditional offerings
- § 4:41 —Foreign investors
- § 4:42 Corporations and business associations
- § 4:43 Partnerships
- § 4:44 Trusts

B. RULE 147(d), AS AMENDED

- § 4:45 Overview
- § 4:46 Subsection (d)(1): Business entities
- § 4:47 Subsection (d)(2): Individuals
- § 4:48 Subsection (d)(3): Fictional business entities
- § 4:49 Non-resident custodian or trustee
- § 4:50 Form of offers
- § 4:51 Installment sales

VI. RESALES TO NON-RESIDENTS

A. TRANSACTIONS OUTSIDE RULE 147, AS AMENDED

- § 4:52 Introduction
- § 4:53 Investment intent?
- § 4:54 Transaction not sales: The challenge of *Busch v. Carpenter*

B. RULE 147(e), AS AMENDED

- § 4:55 Introduction
- § 4:56 Installment agreements
- § 4:57 Binding subscription agreements
- § 4:58 Substitution of securities before issue comes to rest
- § 4:59 —Same issuer
- § 4:60 —Different issuers

VII. PRECAUTIONARY MEASURES

- § 4:61 Transactions outside Rule 147, as amended
- § 4:62 —Right of first refusal
- § 4:63 —Single certificate
- § 4:64 —Salespeople and dealers
- § 4:65 Rule 147(f), as amended

VIII. SOME INTERPRETATIVE PROBLEMS UNDER RULE 147, AS AMENDED

- § 4:66 Generally

IX. EVALUATION OF SECTION 3(a)(11) AND RULE 147, AS AMENDED

- § 4:67 Generally
- § 4:68 Section 3(a)(11): Testing the premises
- § 4:69 —Policy issues
- § 4:70 —Existing protection
- § 4:71 —National interest
- § 4:72 Pre-amended Rule 147 and the disclosure system
- § 4:73 Disclosure

X. RULE 147A

- § 4:74 SEC Compliance Guidance for Rule 147A and Rule 147 Safe Harbors
- § 4:75 Rule 147A provisions: Less Restrictive than Rule 147, as amended
- § 4:76 Rule 147A provisions: common requirements with Rule 147, as amended

CHAPTER 5. REORGANIZATION OF BANK OR SAVINGS ASSOCIATION INTO HOLDING COMPANY: SECTION 3(a)(12)

I. INTRODUCTION

- § 5:1 Overview

- § 5:2 Requirements for the exemption
- § 5:3 Relationship to Rule 145 and Sections 3(a)(9) and 3(a)(10)—Application of Section 5: Rule 145
- § 5:4 —Sections 3(a)(9) and 3(a)(10)

II. NATURE OF HOLDING COMPANY

- § 5:5 Generally

III. NATURE OF ACQUIRED COMPANY

- § 5:6 Generally

IV. EXCHANGE REQUIREMENT

- § 5:7 Overview
- § 5:8 Security holders of holding company
- § 5:9 Problem of integration

V. REALES OF SECURITIES ACQUIRED UNDER SECTION 3(a)(12)

- § 5:10 Generally

CHAPTER 5A. TRADING OF CERTAIN DERIVATIVE SECURITIES: SECURITY FUTURES PRODUCTS AND STANDARDIZED OPTIONS: SECTION 3(a)(14) AND RULE 238

I. INTRODUCTION

- § 5A:1 Overview

II. SECTION 3(a)(14)

- § 5A:2 Critical terms: “futures,” “security” and “single-stock futures:”
- § 5A:3 SEC and CFTC: regulatory authority prior to CFMA (2002):
- § 5A:4 The Commodity Futures Modernization Act (CFMA) and Amendments to Federal Securities Laws
- § 5A:5 Section 3(a)(14): overview
- § 5A:6 Scope of Section 3(a)(14): eligible resales of security futures products
- § 5A:7 Scope of Section 3(a)(14): ineligible resales of security futures products
- § 5A:8 Standardized options: Rule 238: introduction
- § 5A:9 Standardized options: overview and background on SEC regulation
- § 5A:10 Rule 238: conditions and limitations
- § 5A:11 Clearing Agencies

III. SECURITY BASED SWAPS

- § 5A:12 Regulation of Security Based Swaps
- § 5A:13 SEC and Cross Border Security Swap Transactions
- § 5A:14 Frequently Asked Questions on Regulation SBSR

CHAPTER 6. MINI-REGISTRATION UNDER SECTION 3(B)(1): REGULATION A

I. INTRODUCTION

- § 6:1 Introduction—History and Summary of Regulation A
- § 6:2 Background and purpose—History
- § 6:3 —Growth of use
- § 6:4 —Major reform: 1992
- § 6:5 Expansion of Regulation A: JOBS Act of 2012 and SEC Implementing Rules in 2015
- § 6:6 2020 and 2019 Amendments to Regulation A and SEC Compliance Guidance
- § 6:7 Background and purpose—Regulation A compared with registration
- § 6:8 Requirements for exemption

II. SECURITIES EXEMPTED: UNWORTHY OFFERING DOCTRINE

- § 6:9 Introduction
- § 6:10 Residence of issuer
- § 6:11 Absolute unworthiness: Six exclusions
- § 6:12 Introduction
- § 6:13 Covered Persons: Rule 262(a)
- § 6:14 Disqualifying events: Rule 262(a)(1) through Rule 262(a)(8)
- § 6:15 Avoidance of disqualification

III. UNSEASONED OR PROMOTIONAL COMPANIES: SPECIAL REQUIREMENTS

A. INTRODUCTION

- § 6:16 Generally
- § 6:17 Abuses in Regulation A offerings
- § 6:18 Congressional proposals
- § 6:19 Commission approach
- § 6:20 Wheat Report recommendations

B. THE SEC VIEW 1953–1992: RULE 253

- § 6:21 Generally
- § 6:22 Problem issuers
- § 6:23 Limitations on availability of exemption
- § 6:24 Limitation on amount of securities exempted—Special computation provision
- § 6:25 —Special escrow provision—Introduction
- § 6:26 Former Form 7-A

C. CURRENT REGULATION

- § 6:27 Generally

IV. TYPES AND AMOUNT OF SECURITIES EXEMPTED

A. INTRODUCTION

- § 6:28 Generally

**B. MAXIMUM OFFERING PRICE: CATEGORIES OF
TRANSACTIONS AND CATEGORIES OF POTENTIAL SELLERS**

- § 6:29 Generally
- § 6:30 Categories of transactions
- § 6:31 Categories of potential sellers
- § 6:32 —Issuer
- § 6:33 —Affiliate of issuer
- § 6:34 —Non-affiliate of issuer

C. ADJUSTMENTS TO MAXIMUM OFFERING PRICE

- § 6:35 Generally

D. SPECIAL PROBLEMS

- § 6:36 Bonus securities as underwriter's compensation
- § 6:37 Integrated offerings
- § 6:38 Assumption of issuer's debts as securities

E. VALUATION OF SECURITIES TO BE OFFERED

- § 6:39 Generally
 - 1. Aggregate Offering Price
- § 6:40 Generally
- § 6:41 At the market
- § 6:42 Short-term rights and warrants
 - 2. Calculation of Aggregate Offering Price
- § 6:43 Introduction
- § 6:44 Cash offering
- § 6:45 Noncash exchange contemporaneous with cash offering
- § 6:46 Noncash exchange with no contemporaneous cash offering

V. OFFERING STATEMENT: PART I—NOTIFICATION

- § 6:47 The offering statement
- § 6:48 Notification—Part I
- § 6:49 Content of notification—Part I

VI. OFFERING CIRCULAR AND EXHIBITS: PARTS II AND III

A. INTRODUCTION

- § 6:50 Generally

B. OFFERING CIRCULAR—PART II

- § 6:51 Overview—SEC's view
- § 6:52 —Offering circular and prospectus: Comparison
- § 6:53 —Some practical suggestions
- § 6:54 Cover page and introductory statements
- § 6:55 Terms of offering
- § 6:56 Method of distribution

TABLE OF CONTENTS

§ 6:57	Organization and operation of issuer's business—General requirements
§ 6:58	—Special requirement for certain promotional companies
§ 6:59	Officers, directors, and controlling persons
§ 6:60	—Directors, executive officers, and significant employees
§ 6:61	— —Identification
§ 6:62	— —Family relationships
§ 6:63	— —Business experience
§ 6:64	— —Involvement in certain legal proceedings
§ 6:65	—Remuneration of directors and officers
§ 6:66	—Security ownership of management and certain other security holders
§ 6:67	—Interests of management and others in certain transactions
§ 6:68	Capitalization: Securities to be offered—Basic description
§ 6:69	—Dilution
§ 6:70	Use of proceeds
§ 6:71	Financial statements
§ 6:72	—Certification—Background
§ 6:73	—Tier 1 offerings
§ 6:74	—Tier 2 offerings

C. EXHIBITS—PART III

§ 6:75	Background
§ 6:76	Specific requirements

D. SIGNATURE

§ 6:77	Generally
--------	-----------

VII. MANNER OF OFFERING

A. PRE-EFFECTIVE PERIOD

§ 6:78	Historical perspective: Pre-1992—Direct offerings
§ 6:79	—Special requirements: Underwritten offerings
§ 6:80	Impact of 1992 amendments: Regulation A before 2015
§ 6:81	Impact of 1992 amendments: Regulation A before 2015-Pre-filing period
§ 6:82	Impact of 1992 amendments: Regulation A before 2015-The waiting period
§ 6:83	Impact of 2015 amendments: Pre-Effective period

B. POST-EFFECTIVE PERIOD

§ 6:84	Impact of 1992 amendments: Regulation A before 2015—The waiting period
--------	--

VIII. FILING REQUIREMENTS

§ 6:85	Generally
--------	-----------

A. PRE-EFFECTIVE PERIOD

§ 6:86	Impact of 1992 amendments: Regulation A before 2015—Pre-filing written solicitations of interest
§ 6:87	—Offering statement
§ 6:88	—Written communications other than offering circular
§ 6:89	Impact of 2015 amendments—Pre-filing written solicitations of interest
§ 6:90	—Offering statement

B. POSTEFFECTIVE PERIOD

- § 6:91 Revised offering statement
- § 6:92 —Abandoned offering statement
- § 6:93 Written communications other than offering circular
- § 6:94 Ongoing reporting

IX. ADMINISTRATIVE SUSPENSION OF REGULATION A EXEMPTION

- § 6:95 Generally

A. EQUITABLE RELIEF

- § 6:96 Generally

B. DISCIPLINARY SANCTIONS

- § 6:97 Generally

C. RULE 258

- § 6:98 Generally

1. Temporary Suspension

- § 6:99 Procedure—Prior notice not required
- § 6:100 —Notice of temporary suspension order
- § 6:101 Substantive grounds
- § 6:102 —No exemption available or conditions of exemption not met
- § 6:103 —Misleading statements
- § 6:104 —Violation of Section 17 of the Act
- § 6:105 —Post-filing violations
- § 6:106 —Violations under Rule 262(a)
- § 6:107 —Failure to cooperate in commission investigation

2. Vacating a Temporary Suspension Order

- § 6:108 Procedure
- § 6:109 Substantive grounds for vacating a temporary suspension order
- § 6:110 —Challenge to allegations in order
- § 6:111 —Amendment
- § 6:112 —Withdrawal
- § 6:113 —Post-order filing

3. Permanent Suspension

- § 6:114 Procedure
- § 6:115 Substantive grounds

4. Vacating a Permanent Suspension Order

- § 6:116 Generally

X. SUBSTANTIAL AND GOOD FAITH COMPLIANCE

- § 6:117 Generally

XI. EVALUATION OF REGULATION A

- § 6:118 Generally

TABLE OF CONTENTS

- § 6:119 Major problems prior to 2015
- § 6:120 Impact of 2015 amendments
- § 6:121 Impact of State Securities Regulation—Generally
- § 6:122 State Securities Regulation—Tier 1 and Tier 2 Offerings of Regulation A
- § 6:123 Mandatory disclosure by issuers to state regulators
- § 6:124 —Tier 1: Registered disclosure
- § 6:125 —Tier 2: Unregistered disclosure

Volume 7A

CHAPTER 7. LIMITED OFFERING EXEMPTIONS: REGULATION D

I. OVERVIEW

A. INTRODUCTION

- § 7:1 Exempt Transactions vs. Exempt Securities; Limited vs. Private Offerings
- § 7:2 SEC Revises Definition of Accredited Investor and Qualified Institutional Buyer in 2020

B. BACKGROUND

- § 7:3 Generally

C. POLICY IMPLICATIONS: COMMISSION'S VIEW

- § 7:4 Generally
- § 7:5 Modification of prior exemptions
- § 7:6 —Rule 504 versus Rule 240
- § 7:7 —Aggregate sales price
- § 7:8 —Brokerage commissions
- § 7:9 —Rule 504 versus Rescinded Rule 240—Limitation on number of beneficial owners
- § 7:10 —Rule 504 versus Rule 240—Manner of offering and resales
- § 7:11 —Rule 505 versus Rule 242
- § 7:12 —Type of issuer
- § 7:13 —Disclosure
- § 7:14 —Aggregate sales price
- § 7:15 —Accredited investors
- § 7:16 —Rule 506 versus Rule 146
- § 7:17 —Sophistication
- § 7:18 —Disclosure documents
- § 7:19 —Quantity of purchasers
- § 7:20 Distinction between reporting and nonreporting businesses—Regulation as proposed
- § 7:21 —Regulation as adopted
- § 7:22 Impact on exemptions under Section 4(a)(5) and Regulation A
- § 7:23 Relationship between federal and state regulation—Introduction
- § 7:24 —Rule 504
- § 7:25 —Rule 505
- § 7:26 —Rule 506

D. THE 1989 AND 1992 AMENDMENT PROGRAMS

- § 7:27 Introduction
- § 7:28 Changes to Rule 501(a)
- § 7:29 Aggregate offering price
- § 7:30 Calculation of number of purchasers
- § 7:31 Purchaser representative
- § 7:32 Information requirements
- § 7:33 Demonstrating the restricted nature of securities sold
- § 7:34 Revisions to Rules 504, 505, and 506
- § 7:35 Rules 507 and 508

E. SYNOPSIS OF REGULATION D—RULE 500

- § 7:36 Preliminary notes
- § 7:37 Rules 501 through 503
- § 7:38 Rule 504
- § 7:39 Repealed Rule 505
- § 7:40 Rule 506
- § 7:41 Rule 507
- § 7:42 Rule 508

F. REGULATION D IN OPERATION

- § 7:43 Effective dates
- § 7:44 Interpretative letters and releases
- § 7:45 Statutory authority
- § 7:46 Scope of regulation
- § 7:47 Margin requirements
- § 7:48 All or none offerings
- § 7:49 Coincident offers and sales to foreign investors
- § 7:50 How to use the regulation

G. COMMISSION'S COMPARATIVE CHART

- § 7:51 Generally
- § 7:52 Adopted and proposed revisions of Regulation D: 2007 through 2016

II. COMMON DEFINITIONS: RULE 501

A. INTRODUCTION

- § 7:53 Generally

B. ACCREDITED INVESTOR: RULE 501(a)

1. Introduction

- § 7:54 Overview; Expanded Definition of Accredited Investors
- § 7:55 Identifying the “person”
- § 7:56 Reform and reorganization—Elimination of \$150,000 purchaser accreditation standard
- § 7:57 —Redesignations

2. Certain Institutional Investors: Rule 501(a)(1)

- § 7:58 Generally

TABLE OF CONTENTS

	3. Private Business Development Companies: Rule 501(a)(2)
§ 7:59	Introduction
§ 7:60	Business development company: Defined under Investment Act
§ 7:61	—Closed end company
§ 7:62	—Limitation on investments: Sections 55(a)(1) through 55(a)(3)
§ 7:63	Business development company: Defined under Investment Company Act— Significant managerial assistance
§ 7:64	—Election under Section 54(a)
§ 7:65	Business development company: Defined under Investment Advisers Act
§ 7:66	Summary
	4. Tax-Exempt and For-Profit Organizations: Rule 501(a)(3)
§ 7:67	Generally
§ 7:68	Tax-exempt organizations—Tax-exempt status
§ 7:69	—Total assets in excess of \$5 million
§ 7:70	—Purpose of organization
§ 7:71	For-profit organizations
	5. Directors, Executive Officers, and General Partners: Rule 501(a)(4)
§ 7:72	Generally
	6. Natural Persons: \$1 Million Net Worth Test: Rule 501(a)(5)
§ 7:73	Generally
	7. Natural Persons: Income Test: Rule 501(a)(6)
§ 7:74	Generally
	8. Trusts: Rule 501(a)(7)
§ 7:75	Generally
	9. Entities Made Up of Certain Accredited Investors: Rule 501(a)(8)
§ 7:76	Generally
§ 7:77	Eligible entities
§ 7:78	Equity owners
	10. Other Categories of Accredited Investors: Rule 501(a)(9)-(13)
§ 7:79	Accredited Investors added by 2020 Rule Change
	C. AFFILIATE: RULE 501(b)
§ 7:80	Generally
	D. AGGREGATE OFFERING PRICE: RULE 501(c)
§ 7:81	Introduction
§ 7:82	Payments for issuance of securities
§ 7:83	Determining the sum of consideration
§ 7:84	Valuation of noncash consideration
	E. BUSINESS COMBINATION: RULE 501(d)
§ 7:85	Generally

F. CALCULATION OF NUMBER OF PURCHASERS: RULE 501(e)

- § 7:86 Generally
- § 7:87 Rule 501(e)(1)
- § 7:88 Rule 501(e)(2)—General rule
- § 7:89 —Specific purpose exception
- § 7:90 Certain noncontributory employee benefit plans
- § 7:91 Purchasers not United States citizens or residents

G. EXECUTIVE OFFICER: RULE 501(f)

- § 7:92 Generally

H. FINAL ORDER

- § 7:93 Rule 501(g)

I. ISSUER: RULE 501(H)

- § 7:94 General rule
- § 7:95 Limited partnerships
- § 7:96 Special problem: Determining the issuer of equipment trust certificates—
Equipment trust certificates
- § 7:97 —Importance under Regulation D

J. PURCHASER REPRESENTATIVE RULE 501(I)

- § 7:98 Generally
- § 7:99 Independence
- § 7:100 Sophistication
- § 7:101 Acknowledgment by purchaser
- § 7:102 Disclosure statement

III. GENERAL CONDITIONS: RULE 502

A. INTRODUCTION

- § 7:103 Generally

B. INTEGRATION: RULE 502(a)

1. Part of an Offering Concept

- § 7:104 Generally

2. Safe Harbor Provisions in Operation

- § 7:105 An overview
- § 7:106 Sales under employee benefit plan—Introduction
- § 7:107 —Limited exception
- § 7:108 —Offerings under Regulation D
- § 7:109 —Threat of integration

3. Outside the Safe Harbor: Traditional Integration Factors

- § 7:110 2020 Integration Framework replaces the Five Factor Test
- § 7:111 Rule 152

TABLE OF CONTENTS

	4. Sales Following an Aborted Registered Offering
§ 7:112	Generally
	5. Single Business Enterprise: Related Problem
§ 7:113	SEC staff view
§ 7:114	ABA task force guidelines
§ 7:115	Judicial view
	6. Simultaneous Foreign Offerings
§ 7:116	Generally
	C. INFORMATION REQUIREMENTS: RULE 502(b)
§ 7:117	Generally
	1. Accredited Investors Only
§ 7:118	Generally
	2. Non-accredited Investors Only
§ 7:119	Generally
§ 7:120	Written disclosure
§ 7:121	—Where issuer is not subject to reporting requirements
§ 7:122	— —Nonfinancial statement information
§ 7:123	— —Financial statement information
§ 7:124	— — —Offerings as of March 15, 2021 and Offerings after March 15, 2021 for up to \$2 million
§ 7:125	— —Where issuer is not subject to Exchange Act reporting requirements—Financial statement information for Post-2020 Amendments Offerings and Pre-2020 Amendments Offerings for up to \$7.5 million
§ 7:126	—Where issuer is not subject to Exchange Act reporting requirements— Financial statement information for Post 2020 Amendments Offerings and Offerings Prior to 2020 Amendments for over \$7.5 million
§ 7:127	—Where issuer is not subject to reporting requirements—Foreign private issuers
§ 7:128	—Where issuer is subject to reporting requirements
§ 7:129	Exhibits
§ 7:130	Opportunity for questions and answers
§ 7:131	Disclosure of resale limitations
§ 7:132	Special disclosure in business combinations
§ 7:133	Generally
	D. LIMITATION ON MANNER OF OFFERING: RULE 502(c)
	1. Introduction
§ 7:134	Scope and theory
§ 7:135	Framework for analysis
§ 7:136	Number of persons solicited: How relevant?
§ 7:137	Foreign offerees
§ 7:138	Specific exceptions
§ 7:139	—Rule 135c notice
§ 7:140	—Rule 135e offshore communications

2. Relationship between Issuer and Person Making Communication

- § 7:141 Communications by issuer
- § 7:142 Advertisements by a third person—Affiliates
- § 7:143 —Non-affiliates—Conceptual framework
- § 7:144 — —Staff interpretations

3. Relationship between Person Making Communication and Prospective Offeree

- § 7:145 Introduction
- § 7:146 Issuer as offeror
- § 7:147 Affiliate as offeror—Introduction
- § 7:148 —Establishing business relationship
- § 7:149 — —Substantive relationship
- § 7:150 — —Pre-existing relationship
- § 7:151 —Institutional advertising
- § 7:152 Non-affiliate as offeror
- § 7:153 —Recruitment programs
- § 7:154 —Establishing substantive relationship
- § 7:155 Opposition to requirement of pre-existing substantive relationship

4. Relationship between Person Making Communication and Both Issuer and Prospective Offeree

- § 7:156 Generally

5. Timing Factor

- § 7:157 Generally
- § 7:158 Conditioning of market by issuer
- § 7:159 Evidence of agency
- § 7:160 Proof of substantive relationships with offerees
- § 7:161 Indicator of pre-existing relationship

6. Subject Matter of Solicitation

- § 7:162 Generally

7. The Twilight Zone in Rule 506 Offerings

- § 7:163 Generally
- § 7:164 Suggested Reform prior to 2020 Revisions
- § 7:165 Suggested reform—Adopt a new exemption
- § 7:166 —Lift ban on general solicitation

E. LIMITATIONS ON RESALE: RULE 502(d)

- § 7:167 Basic requirements
- § 7:168 Removal of restrictive legends

IV. FILING OF NOTICE OF SALES: RULE 503

- § 7:169 Overview—Form D; SEC CD&I
- § 7:170 SEC's decision to update Form D and require electronic filing
- § 7:171 Timing: events requiring a filing on Form D or an amendment to a previously filed Form D

TABLE OF CONTENTS

- § 7:172 Timing—Initial filing: general:
- § 7:173 —Initial filing: minimum-maximum
- § 7:174 —Initial filing: employee stock option plan
- § 7:175 —Initial filing: aborted transaction
- § 7:176 —Amendments to initial filing
- § 7:177 Procedure and SEC Guidance on Filing and Amending the Form D; State Filing of Form D
- § 7:178 Content

V. RULE 504 PERMITS AN OFFERING OF UP TO \$10 MILLION (AGGREGATE AMOUNT ALLOWED INCREASED BY NOVEMBER 2, 2020 SEC RULE CHANGE FROM \$5 MILLION)

A. INTRODUCTION

- § 7:179 Introduction
- § 7:180 Eligible issuers: Rule 504(a)—General rule
- § 7:181 Eligible Issuers: Rule 504(a)—Exclusion of investment companies
- § 7:182 —Exclusion of blank check companies

B. GENERAL CONDITIONS: RULE 504(B)(1)

1. Overview

- § 7:183 Generally
- § 7:184 General conditions
- § 7:185 Exceptions to general conditions

2. Rule 504: 1992-April 1999

- § 7:186 Rule 504: 1999—January 2017
- § 7:187 Generally
- § 7:188 Generally

a. Offering Made in One or More States Where Securities Were Not Registered

- § 7:189 Generally

b. Offering Made Exclusively in States Where Securities Were Registered

- § 7:190 An overview—States that provide for registration
- § 7:191 —States with no provision for registration
- § 7:192 Resales

C. SPECIFIC CONDITION: MAXIMUM OFFERING PRICE: RULE 504(b)(2)

1. Introduction

- § 7:193 Generally

2. An Analysis

- § 7:194 Generally
- § 7:195 Valuation of securities to be offered—General rules
- § 7:196 —Limitation on aggregate offering price: Business combinations

- § 7:197 Applicable period of time for calculating aggregate offering price
- § 7:198 Relevant amounts—Maximum
- § 7:199 —Deductions
- § 7:200 Deductions from ceiling: Relevant transactions
- § 7:201 “Offering” for purposes of Rule 504(b)(2)
- § 7:202 Pre-1992: Special \$500,000 maximum
- § 7:203 Generally
- § 7:204 Generally
- § 7:205 Introduction
- § 7:206 Impact of Rule 506(d)

VI. FORMER EXEMPTION FOR LIMITED OFFERS AND SALES NOT EXCEEDING \$5 MILLION: FORMER RULE 505

- § 7:207 Introduction—Rescinded Rule 505 under Regulation D, effective May 22, 2017
- § 7:208 Eligible issuers: former Rule 505(a)—Introduction
- § 7:209 —Small business investment companies
- § 7:210 General conditions: former Rule 505(b)(1)
- § 7:211 Specific conditions: former Rule 505(b)(2)
- § 7:212 —Limitation on aggregate offering price
- § 7:213 —Limitation on number of purchasers
- § 7:214 —Disqualifications—Introduction
- § 7:215 — —Overview
- § 7:216 Covered Persons: Rule 262(a)
- § 7:217 Disqualifying Events: Rule 262(a)(1) through Rule 262(a)(8)
- § 7:218 Disqualifying Events: Rule 262(a) of Regulation A and former Rule 505 of Regulation D
- § 7:219 Avoidance of Disqualification
- § 7:220 Federal-state coordination—Introduction
- § 7:221 —NASAA uniform limited offering exemption

VII. EXEMPTION FOR LIMITED OFFERS AND SALES WITHOUT REGARD TO DOLLAR AMOUNT OF OFFERING: RULE 506

- § 7:222 Introduction
- § 7:223 Eligible Issuers: Rule 506(a)—Statutory basis
- § 7:224 Eligible issuers and transactions: Rule 506(a)—Introduction
- § 7:225 —Raising capital
- § 7:226 —Business combinations
- § 7:227 Offerings Subject to Limitation on Manner of Offerings: Rule 506(b)
- § 7:228 General Conditions: Rule 506(b)(1)—Incorporation of Rule 501 and Rule 502
- § 7:229 Specific conditions: Rule 506(b)(2)—Limitation on number of purchasers
- § 7:230 —Limitation on nature of purchasers
- § 7:231 —Judicial interpretation
- § 7:232 Offerings not subject to limitation on manner of offering: Rule 506(c)—Background
- § 7:233 Overview
- § 7:234 General Conditions: Rule 506(c)(1)—Incorporation of Rule 501 and Rule 502(a) and (d)
- § 7:235 Specific Conditions: Rule 506(c)(2)—All purchasers are accredited investors

TABLE OF CONTENTS

- § 7:236 Verification of accredited investor status
- § 7:237 Bad Actor Disqualification: Rule 506(d)—Introduction
- § 7:238 Covered Persons: Rule 506(d)(1)
- § 7:239 Disqualifying Events: Rule 506(d)(1)(i) through (viii)
- § 7:240 Avoidance of disqualification
- § 7:241 Federal pre-emption

VIII. VIOLATIONS: RULES 507 AND 508

A. INTRODUCTION

- § 7:242 Generally

B. RULE 507

- § 7:243 Possibility of disqualification
- § 7:244 Removal of disqualification

C. RULE 508

- § 7:245 Introduction
- § 7:246 Violation not intended for protection of complaining party
- § 7:247 Violation insignificant to offering as a whole—Introduction
- § 7:248 —Violations excluded from Rule 508
- § 7:249 —Violations subject to the rule
- § 7:250 —Insignificant violations
- § 7:251 — —Evaluation of Regulation D conditions and requirements
- § 7:252 — —Evaluation of particular facts
- § 7:253 Issuer's good faith and reasonable attempt to comply

IX. UNUSUAL NONPUBLIC OFFERINGS: REGULATORY CHALLENGES

A. INTRODUCTION

- § 7:254 Generally

B. NEED FOR AN EXEMPTION

- § 7:255 Free shares
- § 7:256 Gypsy swaps

C. PRIVATE TRANSACTIONS IN CONTEMPLATION OF PUBLIC OFFERING

- § 7:257 Generally
- § 7:258 Pre-filing transactions
- § 7:259 Post-filing transactions

D. RESTRUCTURED TRANSACTIONS

- § 7:260 Private to public—Abandoned nonpublic offerings
- § 7:261 —PIPE transactions
- § 7:262 —Private equity lines
- § 7:263 —A/B exchange offers
- § 7:264 Public to private—Limited public offerings

§ 7:265 —Withdrawn registrations

E. USE OF THE INTERNET IN REGULATION D TRANSACTIONS

§ 7:266 Generally

X. COORDINATION AND COMPATIBILITY: A SURVEY OF STATE BLUE SKY LAWS

§ 7:267 Introduction

§ 7:268 An overview of federal-state registration exemptions

§ 7:269 Rule 504 transactions

§ 7:270 —Explicit efforts to coordinate directly

§ 7:271 —Coordination as a result of general regulation

§ 7:272 —Possible exemptions in the absence of coordination

§ 7:273 —Special registration procedure

§ 7:274 Former Rule 505 transactions

§ 7:275 —Explicit efforts to coordinate directly

§ 7:276 —Coordination as a result of general regulation

§ 7:277 —Possible exemptions in absence of coordination—Introduction

§ 7:278 — —Limited number of offerees or purchasers

§ 7:279 — —Private offerings

§ 7:280 — —Limited number of beneficial owners

§ 7:281 —Accredited Investor Exemption

§ 7:282 —Special registration procedure

§ 7:283 Rule 506 transactions—Online Offers

§ 7:284 —After NSMIA: Federal pre-emption

§ 7:285 —Prior to NSMIA—Explicit efforts to coordinate directly

§ 7:286 — —Coordination as a result of general regulation

§ 7:287 — —Possible exemptions in the absence of coordination

§ 7:288 — —Special registration procedure

§ 7:289 Broker-dealer and agent registration: Issuer and employees

XI. AN EVALUATION 1982-2023

§ 7:290 Introduction

§ 7:291 New directions

§ 7:292 —More issuers eligible

§ 7:293 —Increase in dollar amount

§ 7:294 —Broadening of accredited investor category

§ 7:295 —Elimination of “securities of the issuer” concept

§ 7:296 —Authorization of commissions

§ 7:297 —Coordination of federal-state exemptions

§ 7:298 Rejected proposals

§ 7:299 —Simplify disclosure

§ 7:300 —Eliminate filing requirement

§ 7:301 —Modify resale restrictions

§ 7:302 —Reduce risk of liability

§ 7:303 SEC staff analysis of Regulation D in operation

§ 7:304 —Offering and issuer characteristics—Preferred exemptions

§ 7:305 — —Size of offerings

§ 7:306 — —Type of business organization

§ 7:307 — —Industry group

TABLE OF CONTENTS

§ 7:308	— —Type of security offered
§ 7:309	—Accredited investor concept
§ 7:310	— —Offerings limited to accredited investors
§ 7:311	— —Offerings to both accredited and non-accredited investors
§ 7:312	— —Accredited versus non-accredited investors: A comparison
§ 7:313	—Expenses of completed offerings—Introduction
§ 7:314	— —Offerings by corporations
§ 7:315	— —Offerings by partnerships
APPENDIX 7A.	Comparative Chart of Securities Act Limited Offering Exemptions
APPENDIX 7B.	Form D
APPENDIX 7C.	Chart—State Regulation of Exempted Transactions Under Rule 504
APPENDIX 7D.	Sample Legends used in Private Placement Memorandum
APPENDIX 7E.	Chart—Businesses in Organizational Stage
APPENDIX 7F.	Chart—Certain Domestically Organized Issuers
APPENDIX 7G.	Chart—Certain Closely Held Issuers (Without Regard to Place of Organization)
APPENDIX 7H.	Chart—Exemption Based on Limited Number of Purchasers
APPENDIX 7I.	Chart—Exemption Based On Rule 506: After NSMIA
APPENDIX 7J.	Accredited Investor Exemption
APPENDIX 7K.	Institutional Investor or Institutional Buyer Exemption—For QIBs Under Rule 144A(a)(1)
APPENDIX 7L.	Chart—Broker-Dealer and Agent Registration
APPENDIX 7M.	Sample Rule 506 Purchase Agreement
APPENDIX 7N.	Sample Regulation D Stock Purchase Agreement—Corporate Parties
APPENDIX 7O.	Rule 506 Securities Purchase Agreement with Multiple Investors
APPENDIX 7P.	Release #33-10884-Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets
APPENDIX 7Q.	Samples of Restrictive Legends for Securities Certificates
APPENDIX 7R.	SEC Release #33-10824—SEC Amends and Expands Accredited Investor Definition
APPENDIX 7S.	Section 4(a)(2) Stock Purchase Agreement
APPENDIX 7T.	SPAC Subscription Agreement under Rule 506

CHAPTER 8. MISCELLANEOUS EXEMPTIONS UNDER SECTIONS 3(b) AND 3(c)

I. SECURITIES ISSUED IN ORDER TO ELIMINATE FRACTIONAL SHARES, SCRIP CERTIFICATES, OR ORDER FORMS: SECTION 3(b): RULE 236

§ 8:1	Introduction to the problem
§ 8:2	Rule 152a
§ 8:3	Rule 236

II. REGULATION CE: COORDINATED EXEMPTIONS FOR CERTAIN ISSUES OF SECURITIES EXEMPTED UNDER STATE LAW

- § 8:4 Introduction
- § 8:5 California exemption: Rule 1001—Overview
- § 8:6 —Scope of exemption—Overview
- § 8:7 — —California Section 25102(n)
- § 8:8 — — —Nature of issuer
- § 8:9 — — —Nature of purchaser
- § 8:10 — — —Purchaser’s representation
- § 8:11 — — —Disclosure
- § 8:12 — — —General announcements
- § 8:13 — — —Telephone solicitation
- § 8:14 — — —Filing of notice
- § 8:15 —Limitation on amount of offering
- § 8:16 —Resale limitations

III. EMPLOYEE BENEFIT PLANS AND COMPENSATION CONTRACTS: RULE 701

A. INTRODUCTION

- § 8:17 Generally and New Developments
- § 8:18 SEC Proposes Temporary, “Trial” Rule Change to Rule 701 and Form S-8
Compensatory Arrangements for Online Platform Workers
- § 8:19 SEC Compliance Disclosure and Interpretations

B. ELIGIBILITY REQUIREMENTS

- § 8:20 Issuer qualifications—Generally
- § 8:21 —Foreign issuers
- § 8:22 —Temporary Rules 702 and 703: 1988–1993
- § 8:23 Compensatory arrangements
- § 8:24 Eligible participants
- § 8:25 —Traditional participants
- § 8:26 —Consultants and advisers
- § 8:27 —Time for determining eligibility

C. LIMITATION ON AMOUNT

- § 8:28 Overview
- § 8:29 Aggregates sales price tests: Rules 701(d)(2)(i) and (ii)
- § 8:30 —Aggregate sales price
- § 8:31 — —Items included and excluded
- § 8:32 — —Time of the calculation
- § 8:33 —\$1 million test
- § 8:34 —Total assets formula
- § 8:35 Outstanding securities formula: Rule 701(d)(2)(iii)
- § 8:36 Foreign private issuers

D. DISCLOSURE OBLIGATIONS

- § 8:37 Overview

TABLE OF CONTENTS

§ 8:38 Foreign private issuers

E. LIMITATIONS ON REALES: RULE 701(G)

§ 8:39 Generally

F. AN ASSESSMENT

§ 8:40 Generally

IV. SECURITIES OF SMALL BUSINESS INVESTMENT COMPANIES: SECTION 3(c): REGULATION E

§ 8:41 Introduction to small business investment companies

§ 8:42 Legal problems under the Securities Act of 1933

§ 8:43 Section 3(c) and Regulation E

§ 8:44 Resale of Regulation E securities

V. EXEMPTIONS FOR CROSS-BORDER RIGHTS OFFERINGS, EXCHANGE OFFERS AND BUSINESS COMBINATIONS - OVERVIEW

§ 8:45 Purpose of exemptions

§ 8:46 General notes to Rules 800, 801 and 802

§ 8:47 Definitions: Rule 800—Overview

§ 8:48 Foreign private issuer; home jurisdiction

§ 8:49 U.S. holder

§ 8:50 Rights offerings—Introduction

§ 8:51 The term “rights offering”

§ 8:52 Conditions

§ 8:53 Legends

§ 8:54 Status of securities acquired in transaction

§ 8:55 Offerings in connection with exchange offer or business combination—Introduction

§ 8:56 The terms “exchange offer” and “business combination”

§ 8:57 Offeror and subject company eligibility

§ 8:58 Conditions

§ 8:59 Legends

§ 8:60 Presumption for certain offers

§ 8:61 Status of securities acquired in transaction

§ 8:62 Use of the Internet—Introduction

§ 8:63 General approach

§ 8:64 Offshore tender and exchange offers, rights offerings and business combinations

§ 8:65 U.S. exempt component

§ 8:66 Domestic issuers

VI. OFFERINGS TO CANADIAN TAX-DEFERRED RETIREMENT SAVINGS ACCOUNTS

§ 8:67 Introduction

§ 8:68 Conditions of Rule 237

CHAPTER 9. ROUTINE TRADING UNDER SECTION 4(a)(1)

I. TRADING EXEMPTION: OVERVIEW

A. INTRODUCTION

§ 9:1 Generally

B. TRANSACTIONS BY AN ISSUER

1. Term Issuer Defined: Section 2(a)(4)

§ 9:2 Importance of Term—Issuer

§ 9:3 General Rule—Scope of “Issuer”

§ 9:4 Special statutory categories—Certain trust and committee certificates—
Depositor or manager

§ 9:5 —Freedom from individual liability as issuer

§ 9:6 —Equipment trust certificates

§ 9:7 —Securities similar to equipment trust certificates—An overview:
Leveraged lease financing

§ 9:8 — —Aircraft equipment

§ 9:9 — —Electricity generating plants

§ 9:10 —Fractional undivided interests in oil, gas, or other mineral rights

§ 9:11 — —Landowners’ royalty interests and working interests

§ 9:12 — —Overriding royalty interests or oil or gas payments

§ 9:13 — —Fractional beneficial interests

§ 9:14 Section 2(a)(4) issuer distinguished from Section 2(a)(11) issuer

2. Transactions Deemed to Be by an Issuer

§ 9:15 In general

§ 9:16 Sales by subsidiaries of parent’s securities

C. TRANSACTIONS BY UNDERWRITERS

§ 9:17 Introduction to Section 2(a)(11)

§ 9:18 Need for a “distribution”

D. TRANSACTIONS BY DEALERS

§ 9:19 Generally

II. IDENTIFYING POTENTIAL UNDERWRITERS IN A PRIMARY DISTRIBUTION

A. INTRODUCTION

§ 9:20 Generally

B. PERSONS WHO PURCHASE FROM ISSUERS WITH A VIEW TO DISTRIBUTION

1. First Category of Section 2(a)(11): Theory Behind Critical Elements

§ 9:21 Generally

TABLE OF CONTENTS

§ 9:22	Purchased from an issuer
§ 9:23	With a view to
§ 9:24	—Holding period
§ 9:25	—Change of circumstances
§ 9:26	—Fungibility
§ 9:27	Distribution of any security
2. First Category of Section 2(a)(11) in Operation	
§ 9:28	Investment bankers, dealers, and other purchasers—Investment bankers
§ 9:29	—Dealers
§ 9:30	—Other purchasers
§ 9:31	Bonus securities acquired from issuers
§ 9:32	Purchasers of convertible securities
§ 9:33	Writers of call options and purchasers of put options
§ 9:34	Parent as purchaser of subsidiary’s securities: Spin-offs—Introduction
§ 9:35	—Spin-off: Sale or no sale
§ 9:36	—SEC staff enforcement policy
§ 9:37	Acquisitions from issuers in stock dividends, stock splits, and recapitalizations

C. PERSONS WHO SELL FOR ISSUERS

1. Second Category of Section 2(a)(11): Theory

§ 9:38	Introduction
§ 9:39	<i>SEC v. Chinese Consolidated Benevolent Association</i>

2. Second Category of Section 2(a)(11) in Operation

§ 9:40	Investment bankers and dealers
§ 9:41	Finders
§ 9:42	Persons who recommend purchases of securities
§ 9:43	Proxy solicitors
§ 9:44	Officers and directors of issuers

3. General Observations

§ 9:45	Generally
--------	-----------

D. CERTAIN “PARTICIPANTS” IN A DISTRIBUTION

§ 9:46	Generally
--------	-----------

1. “Participants” under Section 2(a)(11): Statutory Doctrine

§ 9:47	Statutory basis—Third clause of Section 2(a)(11)
§ 9:48	—Fourth clause of Section 2(a)(11)
§ 9:49	Interpretative rules
§ 9:50	—Rule 137
§ 9:51	—Rule 142

2. “Participants” under Judicial Doctrine

§ 9:52	<i>SEC v. Chinese Consolidated Benevolent Association</i>
§ 9:53	“Sells for an issuer” category of Section 2(a)(11) distinguished

3. Two Doctrines Distinguished

§ 9:54	Potential confusion
--------	---------------------

§ 9:55 Suggestions for avoiding confusion

E. PRESUMPTIVE UNDERWRITERS

§ 9:56 Introduction to doctrine

§ 9:57 Pragmatic approach

§ 9:58 Fresh winds blowing

§ 9:59 Critique of doctrine

F. CERTAIN SECURITY HOLDERS IN BUSINESS COMBINATIONS: RULE 145(c)

§ 9:60 Generally

1. Introduction to Rule 145(c)

§ 9:61 Generally

2. The Rule in Operation Prior to February 15, 2008: Staff Interpretations

§ 9:62 Persons eligible for underwriter status

§ 9:63 —“Party” to Rule 145(a) transactions

§ 9:64 —Certain affiliates of parties to Rule 145(a) transactions; de-SPAC Transactions and Underwriter Status

§ 9:65 Duration of underwriter status

§ 9:66 Resales outside Rule 145(d)

G. CO-ISSUERS AS UNDERWRITERS: RULE 140

§ 9:67 Co-issuer—An ambiguous term

§ 9:68 Rule 140

III. IDENTIFYING POTENTIAL UNDERWRITERS IN SECONDARY DISTRIBUTIONS

A. INTRODUCTION

§ 9:69 Generally

B. IDENTIFICATION OF AFFILIATES FOR PURPOSES OF SECTION 2(a)(11)

§ 9:70 Introduction

§ 9:71 SEC interpretations

§ 9:72 Judicial interpretations

§ 9:73 Suggested practical guidelines

C. SIGNIFICANCE OF CONTROL CONCEPT UNDER SECTION 2(A)(11)

1. Introduction

§ 9:74 Generally

2. Persons Who Assist Control Persons

§ 9:75 Persons who purchase from control persons with view towards distribution

TABLE OF CONTENTS

- § 9:76 Persons who sell for control persons
- § 9:77 Persons who participate in a secondary distribution—Participation as basis for applying Section 2(a)(11)
- § 9:78 —Participation as basis for denying Section 4(a)(1) exemptions
 - 3. Persons Who Assist Persons Controlled by Control Persons
- § 9:79 Generally
 - 4. Persons Who Assist Persons under Common Control with Issuers
- § 9:80 Generally
 - 5. Special Situations
- § 9:81 Gifts, pledges, trusts, and estates—General view
- § 9:82 —Foreclosure sales by pledgees
- § 9:83 Presumptive underwriters
- § 9:84 Transferees of underwriter compensation securities
- § 9:85 Transferees of Rule 145 securities
- § 9:86 Transferees of spun-off securities
- § 9:87 Certain foreign governments: Rule 143

D. AFFILIATES AND SECTION 4(a)(1)

- § 9:88 Introduction
- § 9:89 Conceptual problem
- § 9:90 Inherent limitation to theory
- § 9:91 Sales made contemporaneously with registered primary distributions

E. NONAFFILIATES AND SECTION 4(a)(1)

- § 9:92 Generally

IV. SPECIAL RULES FOR AVOIDING UNDERWRITER STATUS: RULES 145(D) AND 148

A. REALES OF SECURITIES ACQUIRED IN CERTAIN BUSINESS COMBINATIONS

1. Introduction to Rule 145

- § 9:93 Rule 133(d) and the transition to Rule 145(d)
- § 9:94 Rule 133(d) and the transition to Rule 145(d)—Securities acquired prior to April 15, 1972
- § 9:95 —Securities acquired between April 15, 1972 and January 1, 1973
- § 9:96 Private placements under Section 4(a)(2)

2. Rule 145(d)

- § 9:97 Generally
- § 9:98 Leakage provision: Rule 145(d)(1) and Rule 145(d)(2)(i)
- § 9:99 Leakage provision: Rule 145(d)(1)—Non-affiliate of acquired company and nonaffiliate of issuer
- § 9:100 —Non-affiliate of acquired company and affiliate of issuer
- § 9:101 —Affiliate of acquired company and non-affiliate of issuer
- § 9:102 Leakage provision: Rule 145(d)(1) and Rule 145(d)(2)(i)—Affiliate of acquired company and affiliate of issuer

- § 9:103 Unlimited resales: Rule 145(d)(1) and Rule 145(d)(2)(ii)
- § 9:104 Unlimited resales: Rule 145(d)(1) and Rule 145(d)(2)(iii)
- § 9:105 Rule 145(d) applied by analogy
- § 9:106 Presumptive underwriter doctrine
- § 9:107 Options and short sales

B. BANKRUPTCY RELATED SECURITIES: RULE 148 RESCINDED

- § 9:108 Generally

V. PRIVATE REALES: “SECTION 4(a)(1)”

A. INTRODUCTION

- § 9:109 Generally

B. RELATIONSHIP BETWEEN SECTIONS 4(a)(1) AND 4(a)(2)

- § 9:110 Generally

**1. *SEC v. Ralston Purina* As a Guideline for Section 4(a)(1):
Gilligan, Will & Co. and Its Progeny**

- § 9:111 *Gilligan, Will & Co. v. SEC*

- § 9:112 Subsequent judicial decisions

2. An Assessment

- § 9:113 Introduction

- § 9:114 *Ralston Purina*: Proper scope of holding

- § 9:115 *Gilligan Will & Co. v. SEC*: An appropriate case for *Ralston Purina* standards

- § 9:116 —*SEC v. Gilligan, Will & Co.*: Administrative decision

- § 9:117 —SEC brief in *Gilligan, Will & Co.* appeal

- § 9:118 The bottom line

C. SECTION 4(a)(1 1/2): ITS SCOPE AND PREREQUISITES

- § 9:119 Generally

- § 9:120 Non-affiliate selling restricted securities acquired from issuer

- § 9:121 —Resales before securities come to rest

- § 9:122 —Resales after securities come to rest

- § 9:123 Affiliate selling restricted securities acquired from issuer

- § 9:124 —Resales before securities come to rest

- § 9:125 —Resales after securities come to rest

- § 9:126 Affiliate selling unrestricted securities

- § 9:127 Non-affiliate selling restricted securities acquired from affiliate

- § 9:128 —Resales before securities come to rest

- § 9:129 —Resales after securities come to rest

CHAPTER 10. RESALE OF RESTRICTED AND CONTROL SECURITIES: RULE 144

I. INTRODUCTION

- § 10:1 Need for objective standards

TABLE OF CONTENTS

§ 10:2 Solution

II. ORIGINS OF RULE 144

§ 10:3 Rule 154

§ 10:4 *Wheat report*

§ 10:5 Commission's proposed 160 series

§ 10:6 Proposed Rule 144: First attempt

§ 10:7 Revised proposed Rule 144 in 1970's

III. OVERVIEW AND CHECKLIST

§ 10:8 Overview of Rule 144 and SEC Guidance—Compliance and Disclosure Interpretations and Interpretative Responses regarding Particular Situations

§ 10:9 Checklist for applying rule

§ 10:10 Issuer's duties

§ 10:11 —General duties

§ 10:12 —Duties from transaction linked to issuer

§ 10:13 —Duties under the rule

§ 10:14 Broker's duties

§ 10:15 —General

§ 10:16 —Special SEC rules and Short Sales

IV. SCOPE AND APPLICABILITY

A. RULE IN CONTEXT: SECTIONS 4(a)(1) AND 4(a)(4)

§ 10:17 Generally

B. NONEXCLUSIVE RULE

§ 10:18 Generally

C. SPECIAL SITUATIONS

§ 10:19 Sales by broker-dealers

§ 10:20 Sales by subsidiaries of parent's securities

§ 10:21 —Subsidiary as fiduciary: Not an "issuer"

§ 10:22 —Fiduciary for trust, account, or estate: Availability of rule

§ 10:23 —Subsidiary as pledgee

§ 10:24 Sales by persons while issuer is in registration process

§ 10:25 —Prefiling period

§ 10:26 —Waiting period

§ 10:27 —Post-effective period

§ 10:28 Short sales against the box—Explanation of device

§ 10:29 —Availability of rule

§ 10:30 Sales by persons acting in bad faith

§ 10:31 Sales by non-affiliates of unrestricted securities

§ 10:32 Sales by persons presumed to be underwriters

§ 10:33 Call options traded on national securities exchanges

§ 10:34 Sales by certain holders of Rule 133 securities

§ 10:35 Sales by trustee of employee benefit plan

§ 10:36 Sales through the exercise of listed options

- § 10:37 Sales of securities included in registration statement
- § 10:38 Direct Listing Registration
- § 10:39 Sales of securities on offshore exchange
- § 10:40 Sales of restricted securities by Internal Revenue Service
- § 10:41 Sales of restricted securities by persons who acquired them in a Rule 701 transaction
- § 10:42 —Sales of “free” shares
- § 10:43 —Sales of shares acquired in gypsy swaps
- § 10:44 Special situations—Sales of shares acquired under the Bankruptcy Code—Overview
- § 10:45 —Sales of shares acquired under the Bankruptcy Code—Underwriter defined
- § 10:46 — — —Sections 1145(b)(1)(A), (B), and (C)
- § 10:47 — — —Sections 1145(b)(1)(D)
- § 10:48 — — —Section 1145 exemptions—Resales of securities transferred under Sections 1145(a)(1) or 1145(a)(2)
- § 10:49 — — —Section 1145 exemptions—Resales of securities transferred under Sections 1145(a)(3)
- § 10:50 — — —Stockbroker exemptions—Under the Bankruptcy Code

V. DEFINITIONS: RULE 144(a)

A. AFFILIATE: RULE 144(a)(1)

- § 10:51 Significance of status
- § 10:52 Staff policy towards definition
- § 10:53 Directors, officers, and key shareholders
- § 10:54 —Relatives of affiliates
- § 10:55 —Trusts and estates; employee benefit plans
- § 10:56 —Factors relevant to determination of Controlling Person
- § 10:57 —Persons controlled by issuer
- § 10:58 —Relevance of Integration Concept

B. PERSON: RULE 144(a)(2)

- § 10:59 Introduction
- § 10:60 Certain relatives
- § 10:61 Trusts and estates
- § 10:62 —Ten percent owners of beneficial interests
- § 10:63 —Trustee, executor, or other capacity
- § 10:64 Certain corporations and organizations

C. RESTRICTED SECURITIES: RULE 144(a)(3)

- § 10:65 General rule
- § 10:66 Gifts—Issuer as donor
- § 10:67 —Affiliates and non-affiliates as donor
- § 10:68 Pledge arrangements
- § 10:69 Trusts
- § 10:70 —As recipient
- § 10:71 —Beneficiary as recipient
- § 10:72 Estates
- § 10:73 —As recipient
- § 10:74 —Beneficiary as recipient

TABLE OF CONTENTS

§ 10:75	Underwriter or finder compensation
§ 10:76	—Compensation securities
§ 10:77	—Special holding period
§ 10:78	Securities acquired in foreign offerings: Pre-Regulation S
§ 10:79	Securities acquired in transactions under Sections 3(a)(9), 3(a)(10), and 3(a)(11)
§ 10:80	Innocent purchasers in certain nonexempted transactions
§ 10:81	Employee benefit plans—Introduction
§ 10:82	— —Resales by plan
§ 10:83	— —Resales by distributees
§ 10:84	—Description
§ 10:85	—Three part exception
§ 10:86	Stock dividends, stock splits, changes in par value, and spin-offs—Stock dividends and splits
§ 10:87	—Changes in par value
§ 10:88	—Spin-offs—Overview
§ 10:89	— —Foreign issuers
§ 10:90	Dissolutions
§ 10:91	Mergers effecting change of domicile
§ 10:92	Debt securities

VI. CONDITIONS TO BE MET: RULE 144(b)

§ 10:93	Generally
---------	-----------

VII. CURRENT PUBLIC INFORMATION: RULE 144(c)

§ 10:94	Generally
---------	-----------

A. REPORTING COMPANIES

§ 10:95	Generally
	1. Eligible Issuers
§ 10:96	Sections 12 and 15(d) of Exchange Act
§ 10:97	Voluntary compliance by previously eligible issuer
	2. Ninety-Day Waiting Period
§ 10:98	Background
§ 10:99	Parent-subsidary transactions
	3. Required Information
§ 10:100	Generally
§ 10:101	Delinquent issuer
§ 10:102	Deficient filings
	4. Reliance by Seller
§ 10:103	Generally

B. NON-REPORTING COMPANIES

§ 10:104	Generally
§ 10:105	Eligible issuers
§ 10:106	Waiting period

- § 10:107 Required information
- § 10:108 “Current” information
- § 10:109 “Publicly available” information
- § 10:110 Problem for seller
- § 10:111 Insurance companies

VIII. HOLDING PERIOD FOR RESTRICTED SECURITIES: RULE 144(d)

A. INTRODUCTION

- § 10:112 Background and purpose
- § 10:113 Overview and Recent Developments

B. GENERAL RULE: RULE 144(d)(1)

1. Introduction

- § 10:114 Generally

2. Tracing Requirement

- § 10:115 Generally

3. Acquisitions Not Involving Purchases

- § 10:116 Transfers of both legal and beneficial interests
- § 10:117 Transfers of legal interest only
- § 10:118 —Individuals
- § 10:119 —Partnerships
- § 10:120 —Corporations
- § 10:121 —Trusts

4. Acquisitions Involving Purchases

- § 10:122 Generally
- § 10:123 Date of acquisition
- § 10:124 —Transfers to corporations—Individual as transferor
- § 10:125 — —Corporation as transferor
- § 10:126 — —Limited partnership or limited liability company as transferor
- § 10:127 —Transfers to trusts
- § 10:128 —Ordinary delays in delivery of securities
- § 10:129 —Securities received in settlement of litigation or pursuant to arbitration
- § 10:130 —Securities held in escrow
- § 10:131 —Securities received in Section 3(a)(10) transactions
- § 10:132 —Securities received by pledgee from pledgor-issuer
- § 10:133 Full purchase price and other consideration
- § 10:134 —Service as consideration
- § 10:135 —Restrictive covenants
- § 10:136 —Guarantee as consideration
- § 10:137 —Cancellation of indebtedness as consideration

C. PROMISSORY NOTES, OTHER OBLIGATIONS, OR INSTALLMENT CONTRACTS: RULE 144(d)(2)

- § 10:138 Introduction

TABLE OF CONTENTS

§ 10:139	Full recourse
§ 10:140	Full collateralization
§ 10:141	Full discharge prior to sale
§ 10:142	Loophole? Third-party financing—Background
§ 10:143	—Current SEC staff view
§ 10:144	—Need for non-affiliate third-party lender
§ 10:145	— —Non-affiliate
§ 10:146	— —Third party
§ 10:147	—Guarantees and assumptions of obligations

D. SPECIFIC TACKING PROVISIONS: RULE 144(d)(3)

§ 10:148	Introduction
§ 10:149	Restricted securities received in stock dividends, splits, and recapitalizations
§ 10:150	—Stock dividends and splits
§ 10:151	—Recapitalizations—Internal reorganizations
§ 10:152	— —External reorganizations
§ 10:153	Restricted securities received in conversions
§ 10:154	—Problem
§ 10:155	—Limitations on tacking
§ 10:156	— —Identity of issuer
§ 10:157	— —Exchange
§ 10:158	— —Convertible security
§ 10:159	— —Transactions with an affiliate
§ 10:160	—Relationship to Rule 144(d)(3)(i)
§ 10:161	Restricted securities as contingent stock
§ 10:162	Pledges of restricted securities
§ 10:163	—Bona fide pledge by non-issuer—Overview
§ 10:164	—Bona fide pledge by nonissuer—Pledged securities
§ 10:165	—Full recourse
§ 10:166	— —Pledgor as debtor
§ 10:167	— —Pledgor not the debtor
§ 10:168	—Obligations secured by pledges
§ 10:169	—Pledgor's holding period
§ 10:170	—Certain purchasers who buy from pledgee
§ 10:171	Gifts of restricted securities
§ 10:172	—Preliminary considerations
§ 10:173	—Subsection in operation
§ 10:174	Restricted securities held in trust
§ 10:175	—Preliminary considerations
§ 10:176	—Subsection in operation—Trust as transferee
§ 10:177	— —Beneficiary as transferee
§ 10:178	Restricted securities held by estates
§ 10:179	—Estate as transferee—Non-affiliate estate
§ 10:180	— —Affiliate estate
§ 10:181	—Estate beneficiary as transferee—Non-affiliate beneficiary
§ 10:182	— —Affiliate beneficiary
§ 10:183	Rule 145(a) transactions—General rule
§ 10:184	—Limited exception: Formation of certain holding companies
§ 10:185	Cashless exercise of options and warrants

IX. LIMITATION ON AMOUNT OF SECURITIES SOLD: RULE 144(e)

A. INTRODUCTION

- § 10:186 Background and purpose
- § 10:187 —Wheat report evaluation of Rule 154
- § 10:188 —Road to Rule 144(e)
- § 10:189 Overview

B. SALES BY AFFILIATES

- § 10:190 Generally

C. SALES BY NON-AFFILIATES

- § 10:191 Generally

D. CALCULATION OF VOLUME LIMITATION FOR AFFILIATES

- § 10:192 Introduction
- § 10:193 Relevant sales—Nature of seller
- § 10:194 —Class of securities
- § 10:195 Three-month measuring period
- § 10:196 Volume standards—Background: 1972–1978
- § 10:197 —1978 amendments
- § 10:198 —Present policy
- § 10:199 — —One percent test: Rule 144(e)(1)(i)
- § 10:200 — —Trading volume test for listed and unlisted securities: Rule 144(e)(1)(ii)
- § 10:201 — —Trading volume test for listed securities: Rule 144(e)(1)(iii)
- § 10:202 Trading volume test for debt securities: Rule 144(e)(2)
- § 10:203 Sales in successive periods
- § 10:204 Special situation: Call options
- § 10:205 —Transactions by affiliates

E. AGGREGATION: DETERMINATION OF AMOUNT: RULE 144(e)(3)

1. Aggregation: Defined

- § 10:206 Generally

2. Attribution under Rule 144(a)(2) Distinguished

- § 10:207 Generally
- § 10:208 Rule 144(a)(2) aggregation—Certain relatives and certain corporations and organizations
- § 10:209 —Trusts and estates
- § 10:210 Differences between aggregation under Rules 144(a)(2) and 144(e)(3)

3. Aggregation for Certain Beneficial Owners Who Tack

- § 10:211 Generally

TABLE OF CONTENTS

4. Sales Involving Both Convertible Securities and Underlying Securities

§ 10:212 Generally

5. Aggregation: Companion Provisions to Specific Tacking Subsections

§ 10:213 Introduction

§ 10:214 Certain sales of pledge, gift, and trust securities—Pledge securities

§ 10:215 —Gift securities

§ 10:216 —Securities held in trust

§ 10:217 —Interpretative positions common to Rules 144(e)(3)(ii), (iii), and (iv)

§ 10:218 —Aggregation in operation under Rules 144(e)(3)(ii), (iii), and (iv)

§ 10:219 Securities held by or transferred to estates

§ 10:220 —Non-affiliate estate as seller

§ 10:221 —Affiliate estate as seller

§ 10:222 —Non-affiliate beneficiary as seller

§ 10:223 —Affiliate beneficiary as seller

6. Aggregation by Persons Acting in Concert

§ 10:224 Introduction

§ 10:225 Formal agreements

§ 10:226 Agreements by presumption

§ 10:227 —Multiple accounts: Common fiduciary

§ 10:228 —Business relationships

§ 10:229 —Family relationships

§ 10:230 Rule 144(e)(3)(vi) in operation

7. Sales Excluded from Volume Limitation

§ 10:231 Rule 144(e)(3)(vii)

§ 10:232 Sales under Rule 144(b)(1) Non-Affiliates (replaced Rule 144(k))

X. MANNER OF SALE: RULE 144(f)

§ 10:233 General rule

§ 10:234 Permissible methods of resale

§ 10:235 —Brokers' transactions—General rule

§ 10:236 — —Riskless sales on a principal basis

§ 10:237 —Market-maker

§ 10:238 — —Specialist acting as dealer

§ 10:239 — —Block positioner

§ 10:240 — —Other market-makers

§ 10:241 Solicitation prohibited—General rule

§ 10:242 —Call options

§ 10:243 No remuneration except to broker

§ 10:244 Limited exemptions

§ 10:245 —Non-affiliate estates and beneficiaries

§ 10:246 —Debt Securities

XI. BROKERS' TRANSACTIONS: RULE 144(g)

§ 10:247 Generally

XII. NOTICE OF PROPOSED SALE: RULE 144(h)

A. INTRODUCTION

§ 10:248 Generally

B. SALES SUBJECT TO NOTICE REQUIREMENT

§ 10:249 General rule and small transactions exclusion

§ 10:250 Calculation

C. FORM 144

§ 10:251 Generally—Form 144

D. FILING AND AMENDMENT PROCEDURE

§ 10:252 Time and place to file

§ 10:253 Short Swing Profit Rule (Section 16(b) of Exchange Act)

§ 10:254 Amendments

E. EXEMPTIONS

§ 10:255 Generally

XIII. UNAVAILABILITY OF RULE 144: REPORTING AND NON-REPORTING SHELL COMPANIES

§ 10:256 Rule 144 (i): Post 2007 amendments—Generally

§ 10:257 Rule 144 (i): Pre-2007 amendments

XIV. NON-EXCLUSIVENESS: RULE 144(j)

§ 10:258 SEC view: Post 2007 amendments—Generally

§ 10:259 SEC view: Pre-2007 amendments

§ 10:260 Sales by non-affiliates

§ 10:261 —Sales outside Rule 144

§ 10:262 —Election theory

§ 10:263 Sales by affiliates

XV. PUBLIC AND PRIVATE RESALES: RULE 144

§ 10:264 General rule

§ 10:265 Non-affiliate status

§ 10:266 Former Rule 144(k) Holding Period

§ 10:267 Tacking—No Aggregation

§ 10:268 Tacking under Rule 144(d)(1)

§ 10:269 Tacking—Specific tacking provisions: Rule 144(d)(3)

§ 10:270 Relationship to sales under Rule 144(e)—Impact on non-affiliate sellers

§ 10:271 —SEC Guidance on Impact on other persons

§ 10:272 Restrictive Legends and Removal

Volume 7B

CHAPTER 10A. PRIVATE RESALES: RULE 144A

I. INTRODUCTION

A. PURPOSE AND THEORY

§ 10A:1 Generally

B. OVERVIEW

§ 10A:2 Generally

§ 10A:3 Eligible securities

§ 10A:4 Eligible purchasers

§ 10A:5 Buyer notification

§ 10A:6 Information requirements

§ 10A:7 Conditional general solicitation

C. PERSONS WHO BENEFIT FROM RULE

§ 10A:8 Generally

D. RELATED ISSUES: INVESTMENT COMPANIES, UNIFORM NET CAPITAL REQUIREMENTS, CREDIT ARRANGEMENTS BY BROKER-DEALERS, REGULATION M

§ 10A:9 Investment companies

§ 10A:10 —Liquidity requirements

§ 10A:11 —Nonpublic offering limitation

§ 10A:12 Uniform net capital rule

§ 10A:13 Credit arrangements by brokers or dealers—Regulation T

§ 10A:14 —Section 11(d)(1)

§ 10A:15 Regulation M—Trading practice rules: Regulation before 1997

§ 10A:16 —Current regulation

E. INTERACTION WITH REGULATION S

§ 10A:17 Generally

II. ELIGIBLE SECURITIES

A. INTRODUCTION

§ 10A:18 Generally

B. INELIGIBLE SECURITIES

§ 10A:19 Generally

§ 10A:20 Publicly traded securities

§ 10A:21 “Same class as”

§ 10A:22 —Substantially identical securities

§ 10A:23 —Convertible and exchange securities and warrants

III. ELIGIBLE PURCHASERS

A. INTRODUCTION TO QUALIFIED INSTITUTIONAL BUYERS

§ 10A:24 Generally

B. DESIGNATED ENTITIES

- § 10A:25 Introduction
- § 10A:26 Entities
- § 10A:27 Acting for an eligible account
- § 10A:28 Qualifying amount—Overview
- § 10A:29 —Calculation of qualifying amount
- § 10A:30 — —Excluded securities
- § 10A:31 — —Valuation at cost
- § 10A:32 — —Consolidated financial statements

C. INVESTMENT COMPANIES

§ 10A:33 Generally

D. ENTITIES OWNED ENTIRELY BY QUALIFIED INSTITUTIONAL BUYERS

§ 10A:34 Generally

E. REGISTERED BROKER-DEALERS

- § 10A:35 Overview
- § 10A:36 Eligibility: Dealer meets qualifying amount
- § 10A:37 Eligibility: Dealer as riskless principal

F. BANKS AND SAVINGS AND LOAN ASSOCIATIONS

- § 10A:38 Introduction
- § 10A:39 Combined securities ownership and net worth test

G. PROOF OF ELIGIBILITY

- § 10A:40 Overview
- § 10A:41 Overview for Proof of Eligibility & SEC Compliance & Disclosure
Interpretations
- § 10A:42 Basis for reliance

IV. NOTIFICATION TO BUYER

§ 10A:43 Generally

V. INFORMATION REQUIREMENTS

- § 10A:44 Introduction
- § 10A:45 Transactions without information obligation
- § 10A:46 Transactions with information obligation

VI. CONDITIONAL GENERAL SOLICITATION

§ 10A:47 Introduction

TABLE OF CONTENTS

- § 10A:48 Administrative interpretations
- § 10A:49 —Research reports under Rules 138 and 139
- § 10A:50 —Limited solicitations

VII. STATUS OF SECURITIES SOLD UNDER RULE 144A

- § 10A:51 Generally

VIII. IMPACT OF RULE 144A

- § 10A:52 Introduction
- § 10A:53 Foreign issuers
- § 10A:54 —All Rule 144A placements
- § 10A:55 —Rule 144A placements by domestic issuers
- § 10A:56 —Rule 144A placements by foreign issuers
- § 10A:57 Institutional investors
- § 10A:58 Impact on U.S. public markets
- § 10A:59 Rule 144A market
- § 10A:60 Investment companies
- § 10A:61 Overall assessment of Rule 144A
- § 10A:62 Florida 2024 Disqualification Rule and Rule 144A

CHAPTER 11. NONPUBLIC OFFERINGS: SECTION 4(a)(2)

I. INTRODUCTION

- § 11:1 An overview
- § 11:2 Legislative history
- § 11:3 Elements of exemption—Traditional analysis
- § 11:4 —A pragmatic view
- § 11:5 — —Nature of issuer
- § 11:6 — —Nature of securities
- § 11:7 — —Nature of transaction
- § 11:8 —Significance of Rule 506 for transactions outside of rule
- § 11:9 Rule 146: Experiment with objective criteria
- § 11:10 Rule 506 of Regulation D

II. PRIVATE PLACEMENTS PRIOR TO *SEC V. RALSTON PURINA CO.*

- § 11:11 SEC interpretation
- § 11:12 Judicial construction

III. *SEC V. RALSTON PURINA CO.*

- § 11:13 Introduction
- § 11:14 Factual background
- § 11:15 —Issuer
- § 11:16 —Purpose of stock offerings to employees
- § 11:17 —Nature and number of offerees
- § 11:18 —Offering methods
- § 11:19 —Disclosure material

- § 11:20 —Reasons for not registering offering
- § 11:21 —Risks of post-offering resales to nonemployees
- § 11:22 District court opinion
- § 11:23 Court of Appeals opinion
- § 11:24 U.S. Supreme Court opinion
- § 11:25 An evaluation

IV. SCOPE OF EXEMPTION

A. TRANSACTIONS BY ISSUERS AND OTHER PARTICIPANTS

1. Transactions Outside Rule 506

- § 11:26 Overview

2. Transactions Pursuant to Rule 506

- § 11:27 Introduction
- § 11:28 Eligible issuers: Rule 506(a)
- § 11:29 Bad actor disqualification: Rule 506(d): Introduction
- § 11:30 Covered persons: Rule 506(d)(1)
- § 11:31 Disqualifying events: Rule 506(d)(1)(i) through (viii)
- § 11:32 Avoidance of disqualification

B. INTEGRATION

1. Transactions Outside Rule 506

- § 11:33 SEC view: Rule 152
- § 11:34 Case law
- § 11:35 Contemporaneous foreign offering

2. Transactions under Rule 506

- § 11:36 Part of an offering concept
- § 11:37 Safe harbor provisions in operation
- § 11:38 Single business enterprise: A related problem
- § 11:39 Contemporaneous foreign offering

V. “OFFERING” AND “OFFEREE” DEFINED

- § 11:40 Legal standard
- § 11:41 Standard as applied—Transactions outside Rule 506
- § 11:42 —Transactions under Rule 506
- § 11:43 Identifying the real offerees and purchasers
- § 11:44 —Business organizations and fiduciaries—Transactions outside Rule 506
- § 11:45 — —Transactions under Rule 506
- § 11:46 —Nominees and associates

VI. NUMBER OF OFFEREES OR PURCHASERS

- § 11:47 Introduction

A. TRANSACTIONS OUTSIDE RULE 506

- § 11:48 Judicial attitude
- § 11:49 SEC enforcement policy

TABLE OF CONTENTS

B. TRANSACTIONS UNDER RULE 506(B)

- § 11:50 Introduction
- § 11:51 Transactions under Rule 506(b)—Limitation on number of purchasers
- § 11:52 —Calculation of number of purchasers
- § 11:53 — —Rule 501(e)(1)
- § 11:54 — —Rule 501(e)(2)—General rule
- § 11:55 — — —Specific purpose exception
- § 11:56 — —Certain noncontributory employee benefit plans
- § 11:57 — —Purchasers not U.S. citizens or residents

VII. OFFEREES' RELATIONSHIP TO EACH OTHER

- § 11:58 Generally

VIII. OFFEREE QUALIFICATION

A. RELEVANT QUESTIONS

- § 11:59 Generally

B. SOPHISTICATION

- § 11:60 Is it required? Survey of courts of appeals
- § 11:61 —No position
- § 11:62 —Condition of exemption
- § 11:63 —Important factor
- § 11:64 —Factor of limited significance
- § 11:65 —Not a relevant consideration
- § 11:66 —Summary and implications
- § 11:67 “Sophistication” defined—Introduction
- § 11:68 —General versus specific sophistication
- § 11:69 —Relevant factors
- § 11:70 — —Education
- § 11:71 — —Occupation
- § 11:72 — —Business experience
- § 11:73 — —Investment experience
- § 11:74 — —Relationship with issuer
- § 11:75 — —Relationship with other offerees
- § 11:76 — —Approximate net worth
- § 11:77 — —Assistance from attorney or business advisor
- § 11:78 — —Fixed or negotiated terms
- § 11:79 — —Economic bargaining power
- § 11:80 Sophistication by proxy: Offeree representative

C. ALTERNATIVES TO SOPHISTICATION IN QUALIFYING OFFEREES

- § 11:81 Introduction
- § 11:82 Ability to bear risks
- § 11:83 Special relationships
- § 11:84 —Access offerees—Term defined
- § 11:85 — —Not the same as insiders
- § 11:86 —Close personal friends

D. TRANSACTIONS UNDER RULE 506

1. Introduction

§ 11:87 Generally

2. Accredited Investor

a. Introduction

§ 11:88 Overview

§ 11:89 Identifying the “person”

§ 11:90 Reform and reorganization—Elimination of \$150,000 purchaser accreditation standard

§ 11:91 —Redesignations

b. Certain Institutional Investors: Rule 501(a)(1)

§ 11:92 Generally

c. Private Business Developed Companies: Rule 501(a)(2)

§ 11:93 Generally

d. Tax-Exempt and For-Profit Organizations: Rule 501(a)(3)

§ 11:94 Generally

§ 11:95 Tax-exempt organizations—Tax-exempt status

§ 11:96 —Total assets in excess of \$5 million

§ 11:97 —Purpose of organization

§ 11:98 For-profit organizations

e. Directors, Executive Officers, and General Partners: Rule 501(a)(4)

§ 11:99 Generally

f. Natural Persons: \$1 Million Net Worth Test: Rule 501(a)(5)

§ 11:100 Generally

g. Natural Persons: Income Test: Rule 501(a)(6)

§ 11:101 Generally

h. Trusts: Rule 501(a)(7)

§ 11:102 Generally

i. Entities Made Up of Certain Accredited Investors: Rule 501(a)(8)

§ 11:103 Generally

§ 11:104 Eligible entities

§ 11:105 Equity owners

3. Purchaser Representative

§ 11:106 Generally

§ 11:107 Independence

§ 11:108 Sophistication

§ 11:109 Acknowledgement by purchaser

§ 11:110 Disclosure statement

TABLE OF CONTENTS

§ 11:111 Judicial interpretation

IX. INFORMATION

A. INTRODUCTION

§ 11:112 Generally

B. TRANSACTIONS OUTSIDE RULE 506

§ 11:113 What type of information—In general

§ 11:114 —Limited partnerships: Special problems

§ 11:115 How should disclosure occur

§ 11:116 When must disclosure occur

C. TRANSACTIONS UNDER RULE 506(b)

§ 11:117 Introduction

§ 11:118 Accredited investors only

§ 11:119 Nonaccredited investors only

§ 11:120 —Written disclosure

§ 11:121 — —Where issuer is not subject to reporting requirements

§ 11:122 — — —Offerings up to \$2 million

§ 11:123 — — —Offerings up to \$7.5 million

§ 11:124 — — —Offerings over \$7.5 million

§ 11:125 — —Where issuer is subject to reporting requirements

§ 11:126 —Exhibits

§ 11:127 —Opportunity for questions and answers

§ 11:128 —Disclosure of resale limitations

§ 11:129 —Special disclosure in business combinations

§ 11:130 Both accredited and nonaccredited investors

X. OFFERINGS: NUMBER OF UNITS AND SIZE

§ 11:131 Number of units offered—Theory

§ 11:132 —Factor in practice

§ 11:133 Size of offering

XI. MANNER OF OFFERING

A. TRANSACTIONS OUTSIDE RULE 506

§ 11:134 Background on statutory private placement exemption

§ 11:135 Generally

§ 11:136 Direct communication with offerees in a Private Offering

§ 11:137 General advertising and solicitation prohibited

§ 11:138 Solicitations of Interest: Prior to a Registration Public Offering

B. TRANSACTIONS UNDER RULE 506(b)

1. Introduction

§ 11:139 Background on Rule 506(b)

§ 11:140 Manner of offering: Scope and theory

§ 11:141 Permissible Pre-Offering Communications: Rule 241 Test the Waters and Rule 148 Demo Day

§ 11:142 Number of persons solicited: How relevant?

§ 11:143 Foreign offerees

2. Relationship between Issuer and Person Making Communication

§ 11:144 Communications by issuer

§ 11:145 Communications by a third person—Affiliates

§ 11:146 Advertisements by a third person—Nonaffiliates—Conceptual framework

§ 11:147 — —Staff interpretations

3. Relationship between Person Making Communication and Offeree

§ 11:148 Introduction

§ 11:149 Issuer as offeror

§ 11:150 Affiliate as offeror—Introduction

§ 11:151 —Establishing the business relationship

§ 11:152 — —Substantive relationship

§ 11:153 — —Pre-existing relationship

§ 11:154 —Institutional advertising

§ 11:155 Nonaffiliate as offeror

§ 11:156 —Recruitment programs

§ 11:157 —Establishing substantive relationship

§ 11:158 Opposition to requirement of pre-existing substantive relationship

4. Timing Factor

§ 11:159 Generally

§ 11:160 Conditioning of market by issuer

§ 11:161 Evidence of agency

§ 11:162 Proof of substantive relationships with offerees

§ 11:163 Indicator of preexisting relationship

5. Subject Matter of Solicitation

§ 11:164 Generally

6. The Twilight Zone in Rule 506(b) Offerings

§ 11:165 Generally

C. TRANSACTIONS UNDER RULE 506(c)

§ 11:166 Background

§ 11:167 Overview

1. General Conditions: Rule 506(c)(1)

§ 11:168 Incorporation of Rule 501 and Rule 502(a) and (d)

2. Specific Conditions: Rule 506(c)(2)

§ 11:169 All purchasers are accredited investors

§ 11:170 Verification of accredited investor status

XII. LIMITATIONS ON DISPOSITION

A. TRANSACTIONS OUTSIDE RULE 506

§ 11:171 Generally

TABLE OF CONTENTS

- § 11:172 Investment intent
- § 11:173 Appropriate legends
- § 11:174 Stop-transfer orders

B. TRANSACTIONS UNDER RULE 506

- § 11:175 Basic requirements
- § 11:176 Removal of restrictive legends

XIII. FILING REQUIREMENTS: RULE 506 TRANSACTIONS

- § 11:177 Introduction
- § 11:178 NASAA EFD Filing System
- § 11:179 Timing—General rule
- § 11:180 —Minimum-maximum
- § 11:181 —Employee stock option plan
- § 11:182 Overview—Form D Filing and Amendment Process
- § 11:183 Procedure
- § 11:184 Content

XIV. TRANSACTIONAL ORGANIZATION

- § 11:185 Introduction
- § 11:186 Institutional private placements
- § 11:187 —Established issuer
- § 11:188 —Debt securities
- § 11:189 —Direct negotiations
- § 11:190 —Substantial investment
- § 11:191 —Representations and covenants
- § 11:192 Employee offerings
- § 11:193 Promotional offerings
- § 11:194 —Mom and pop start-up
- § 11:195 —Venture capital
- § 11:196 —Tax shelter
- § 11:197 — —Nature of issuer
- § 11:198 — —Nature of securities
- § 11:199 — —Sales and investor participation
- § 11:200 — —Offering expenses
- § 11:201 Business combinations—Transactions outside Rule 506
- § 11:202 —Transactions pursuant to Rule 506

XV. PROCEDURAL MATTERS

A. BURDEN OF PROOF

- § 11:203 Legal standard
- § 11:204 Law versus fact
- § 11:205 Due diligence procedure
- § 11:206 Critique of burden of proof requirement
- § 11:207 —Nature of lawsuit
- § 11:208 —Issuer's attitude towards compliance
- § 11:209 —Nature of deficiency

B. RELATIONSHIP BETWEEN SECTION 4(a)(2) AND CLAIMS OF FRAUD

- § 11:210 Generally

- § 11:211 Exemption despite existence of fraud?
- § 11:212 Failure to satisfy private placement procedures: Fraud?
- § 11:213 —Deceptive act or practice
- § 11:214 —Failure to inform purchasers about limitations on disposition
- § 11:215 Manner of disclosure under Section 4(a)(2) and justifiable reliance
- § 11:216 —Misleading disclosure document: Accurate information available
- § 11:217 —Accurate disclosure document: Contradictory oral representations

CHAPTER 12. DEALERS' EXEMPTION: SECTION 4(a)(3)

I. INTRODUCTION

- § 12:1 Stating the legal issues
- § 12:2 Conceptual format of legislative solution
- § 12:3 —Distribution: Securities registered under the Act
- § 12:4 —Distribution: Securities not registered under the Act
- § 12:5 Statutory exemption: 1933 through 1954
- § 12:6 1954 and 1964 amendments
- § 12:7 Exemption in its present form

II. DEALER QUA DEALER

- § 12:8 Dealer defined
- § 12:9 Dealer or underwriter: An important distinction—Introduction
- § 12:10 —Rule 141
- § 12:11 —Duty of inquiry—Overview of standards
- § 12:12 — —Judicial and administrative interpretations

III. EXEMPTED TRANSACTIONS FOR BROKER-DEALERS

- § 12:13 Everyday transactions
- § 12:14 Securities eligible for dealer's exemption

IV. BROKER-DEALER ACTIVITY DURING ILLEGAL DISTRIBUTIONS: SECTION 4(a)(3)(A)

- § 12:15 Introduction
- § 12:16 Measuring the 40 days
- § 12:17 Rule 144A transactions

V. BROKER-DEALER ACTIVITY DURING REGISTERED OFFERINGS: SECTION 4(a)(3)(B)

A. INTRODUCTION

- § 12:18 Generally

B. 40-DAY OBLIGATION

- § 12:19 Introduction
- § 12:20 Rule 174
- § 12:21 Rule 172
- § 12:22 Rule 173

C. 90-DAY OBLIGATION

- § 12:23 Introduction

TABLE OF CONTENTS

§ 12:24 Rule 174

D. SPECIAL OBLIGATION: INVESTMENT COMPANY ACT SECTION 24(d)

§ 12:25 Generally

E. PRACTICAL PROBLEMS

1. Investors in Same Household

§ 12:26 Generally

2. Electronic Delivery

§ 12:27 1995 electronic media release

§ 12:28 2000 electronic media release

§ 12:29 “Access equals delivery” release

VI. BROKER-DEALER PARTICIPATING IN REGISTERED OFFERINGS: SECTION 4(a)(3)(C)

§ 12:30 Introduction

§ 12:31 Underwriter turned dealer

§ 12:32 Unsold allotments

§ 12:33 —Determining the allotment: *Halsey, Stuart & Co.*

§ 12:34 —Purchases by dealers for investment

§ 12:35 Rule 144A transactions

VII. ADDITIONAL SECURITIES OF OUTSTANDING CLASS

§ 12:36 Generally

CHAPTER 13. BROKERS’ SPECIAL EXEMPTION: SECTION 4(a)(4)

I. INTRODUCTION

§ 13:1 Purpose and scope of exemption

§ 13:2 Practical problems for broker-dealers

§ 13:3 An outline for discussing exemption

II. BROKER FOR NON-AFFILIATES

§ 13:4 Generally

III. BROKER FOR AFFILIATES

§ 13:5 Introduction and outline of discussion

§ 13:6 Affiliates: Potential underwriters

§ 13:7 Broker’s special exemption: 1933 through 1945

§ 13:8 A new interpretation: *In re Ira Haupt & Co.*

§ 13:9 Rule 154: Search for certainty

§ 13:10 Rule 144: Present solution

§ 13:11 Restricted securities

IV. INTERRELATIONSHIP BETWEEN SECTION 4(a)(4) AND RULE 144(g)

- § 13:12 Generally
- § 13:13 Availability of Rule 144(g)
- § 13:14 Section 4(a)(4) and Rule 144(g)

V. BROKER-DEALER AS AGENT: RULE 144(g)(1)

- § 13:15 Generally
- § 13:16 —Functioning as agent
- § 13:17 —Broker-dealer as both agent and customer
- § 13:18 —Agent controlled by issuer of securities to be sold
- § 13:19 —Broker-dealer in control of seller: Principal or agent?
- § 13:20 —Broker-dealer—Market-maker: Principal or agent?

VI. BROKER'S COMMISSION: RULE 144(g)(1)

- § 13:21 Generally
- § 13:22 —Usual and customary broker's commission
- § 13:23 —Administrative expenses

VII. SOLICITATION OF CUSTOMERS' ORDERS: RULE 144(g)(2)

- § 13:24 Generally
- § 13:25 —Pre-Rule 144 interpretations
- § 13:26 —Solicitation of buy orders: Rule 144(g)(2)
- § 13:27 —Nature of customers' orders in Rule 144(g)(2)
- § 13:28 — —"Customers" defined
- § 13:29 — —Permissible types of customers' orders
- § 13:30 —Nature of broker-dealer
- § 13:31 — —Broker controlled by issuer of securities to be sold
- § 13:32 — —Market-makers
- § 13:33 —Nature of purchaser
- § 13:34 —Exceptions to anti-solicitation requirement in Rule 144(g)(2)
- § 13:35 —Exceptions to antisolicitation requirement in Rule 144(g)(2)—Inquiries of certain brokers or dealers: Rule 144(g)(2)(i)
- § 13:36 — —Inquiries of certain customers: Rule 144(g)(2)(ii)—Substantive requirements
- § 13:37 — — —Written records
- § 13:38 — — —Certain inquiries in interdealer quotation system: Rule 144(g)(2)(iii)

VIII. DUTY OF CARE: RULE 144(g)(3)

- § 13:39 Generally

IX. ORDERS EXECUTED ON AN EXCHANGE OR IN THE OVER-THE-COUNTER MARKET

- § 13:40 Generally

CHAPTER 14. OFFERINGS TO ACCREDITED INVESTORS: SECTION 4(a)(5)

- § 14:1 Introduction

TABLE OF CONTENTS

- § 14:2 Limitation on amount
- § 14:3 Limitations on offerees and purchasers
- § 14:4 Disclosure obligations
- § 14:5 Manner of offering
- § 14:6 Resales
- § 14:7 Notice of sales
- § 14:8 Evaluation

CHAPTER 15. REGULATION CROWDFUNDING: SECTION 4(A)(6)

I. INTRODUCTION

- § 15:1 Background
- § 15:2 Overview of the Rules of Regulation Crowdfunding
- § 15:3 General Limitations and Exclusion: Rule 100
- § 15:4 SEC Compliance and Disclosure Interpretations
- § 15:5 SEC Frequently Asked Questions about Regulation Crowdfunding
- § 15:6 2022 SEC Investor Guide to Regulation Crowdfunding

II. ISSUER REQUIREMENTS

- § 15:7 Introduction to Issuer Requirements under Regulation Crowdfunding
- § 15:8 Disclosure Requirements
- § 15:9 SEC amends Disclosure Requirements under Regulation S-K
- § 15:10 Ongoing Reporting Requirements
- § 15:11 Form C and Filing Requirements; SEC Guidance on Filing
- § 15:12 Prohibition on advertising terms of the offering
- § 15:13 Compensation of Persons Promoting the Offering
- § 15:14 Other Issuer Requirements

III. INTERMEDIARY REQUIREMENTS

- § 15:15 Introduction
- § 15:16 Definitions of funding portals and associated persons
- § 15:17 General Requirements for Intermediaries; SEC Guidance on Registering as a Portal
- § 15:18 Measures to Reduce Risk of Fraud
- § 15:19 Account opening
- § 15:20 Requirements with Respect to Transactions
- § 15:21 Completion of offerings, cancellations and reconfirmations
- § 15:22 Payments to Third Parties

IV. ADDITIONAL FUNDING PORTAL REQUIREMENTS

- § 15:23 Introduction
- § 15:24 Registration Requirement
- § 15:25 Exemption from Broker-Dealer Registration
- § 15:26 Safe Harbor for Certain Activities
- § 15:27 Compliance and Enforcement
- § 15:28 Records To Be Created and Maintained by Funding Portals

V. MISCELLANEOUS PROVISIONS

- § 15:29 Introduction

- § 15:30 Restrictions on Resales
- § 15:31 Insignificant Deviations
- § 15:32 Disqualification Events
- § 15:33 SEC Adopts Temporary COVID-19 Relief for Small Issuers using Regulation Crowdfunding

CHAPTER 15A. REGULATION S: EXTRATERRITORIAL APPLICATION OF REGISTRATION REQUIREMENTS

I. INTRODUCTION

- § 15A:1 Overview
- § 15A:2 2020 and 1998 amendments—Background
- § 15A:3 1998 amendments—Major changes
- § 15A:4 —Scope of amendments
- § 15A:5 Related issues: Exchange Act reporting
- § 15A:6 —Form 8-K reporting
- § 15A:7 —Quarterly reporting: Effective January 1, 1999

II. BACKGROUND: REGULATORY STRUCTURE PRIOR TO REGULATION S

- § 15A:8 Generally

III. PRELIMINARY NOTES AND GENERAL STATEMENT (RULE 901)

- § 15A:9 Generally

IV. GENERAL CONDITIONS

- § 15A:10 Overview of Regulation S
- § 15A:11 Offshore transactions
- § 15A:12 Directed selling efforts—Overview
- § 15A:13 —Use of the Internet
- § 15A:14 —Offshore press conferences: Rule 135e—Introduction
- § 15A:15 — —Offshore press activity
- § 15A:16 — —Offshore offering
- § 15A:17 — —Press access: Domestic and foreign
- § 15A:18 — —Written materials requirements

V. ISSUER SAFE HARBOR: RULE 903

- § 15A:19 Introduction
- § 15A:20 Issuer category 1—Overview
- § 15A:21 —Important terms
- § 15A:22 Issuer category 2
- § 15A:23 —Transactional restrictions
- § 15A:24 —Offering restrictions
- § 15A:25 Issuer category 3
- § 15A:26 —Transaction restrictions
- § 15A:27 — —Equity securities
- § 15A:28 — —Debt securities

TABLE OF CONTENTS

- § 15A:29 — —Equity or debt securities
- § 15A:30 —Offering restrictions
- § 15A:31 —The presence in “offshore transactions” of persons with ties to the U.S
- § 15A:32 —Practical problems

VI. RESALE SAFE HARBOR: RULE 904

- § 15A:33 Overview
- § 15A:34 Potential abuses under Regulation S—Introduction
- § 15A:35 —Rule 903 abuses
- § 15A:36 —Rule 904 abuses
- § 15A:37 —SEC responses to abusive practices
- § 15A:38 — —Problematic problems release
- § 15A:39 — —1996 release: Periodic reporting
- § 15A:40 — —1997 release: Proposed amendments
- § 15A:41 Rule 905
- § 15A:42 The limits of Rule 904: Categories of resale transactions
- § 15A:43 —Resales outside the United States
- § 15A:44 —Resales within the United States
- § 15A:45 — —Resales of securities sold offshore in reliance upon Rule 903
- § 15A:46 — —Resales of securities sold offshore in reliance upon Rule 904
- § 15A:47 — —Resales of securities sold offshore not in compliance with Regulation S

VII. INTEGRATION OF U.S. OFFERINGS AND REGULATION S OFFERINGS

- § 15A:48 Generally: No integration
- § 15A:49 Offerings by foreign funds
- § 15A:50 Foreign Compliance Issues

CHAPTER 16. VIOLATIONS: CURES AND REMEDIES

I. INTRODUCTION

- § 16:1 Generally—SEC Enforcement and Related Federal Securities Laws
- § 16:2 Cooperation in SEC Enforcement Investigations
- § 16:3 Generally—Interests involved
- § 16:4 —Public interest
- § 16:5 —Seller’s interest
- § 16:6 —Purchaser’s interest

II. ADMINISTRATIVE SANCTIONS

- § 16:7 Introduction: SEC Authority; Constitutional Challenges to SEC Administrative Law Judge Proceedings and FINRA Enforcement Proceedings
- § 16:8 Investigations—Procedures
- § 16:9 —Subpoenas
- § 16:10 Hearings
- § 16:11 Enforcement actions
- § 16:12 Criminal prosecution

III. SELLER'S RESPONSE TO A VIOLATION

A. PROBLEMS

§ 16:13 Generally

B. ALTERNATIVES TO A RESCISSION OFFER

§ 16:14 Introduction

§ 16:15 Unlawful sales

§ 16:16 Unlawful offers—Introduction

§ 16:17 —Offers that mislead

§ 16:18 —Violations of Section 5

C. RESCISSION OFFERS

§ 16:19 Introduction—Model

§ 16:20 —Dangers

§ 16:21 —Federal attitude

§ 16:22 —State approach

§ 16:23 Offerors

§ 16:24 Offerees

§ 16:25 Amount of offer

§ 16:26 Time factors

§ 16:27 Funding and related matters

§ 16:28 Registration

§ 16:29 Disclosure

§ 16:30 Cutoff effect

§ 16:31 Releases

D. ARBITRATION

§ 16:32 Introduction

§ 16:33 *Rodriguez*

IV. SECTION 12(a)(1)

A. INTRODUCTION

§ 16:34 Generally

B. VIOLATIONS OF SECTION 5

§ 16:35 Introduction

§ 16:36 Illegal sales

§ 16:37 Illegal offers

§ 16:38 Illegal deliveries

C. PERSONS HAVING STANDING TO SUE

§ 16:39 Introduction

§ 16:40 Plaintiff as representative for purchaser

D. PERSONS WHO ARE LIABLE: SELLER REQUIREMENT

§ 16:41 Introduction

TABLE OF CONTENTS

- § 16:42 *Pinter v. Dahl*—Introduction
- § 16:43 —Factual background
- § 16:44 —Lower court opinions
- § 16:45 —Supreme court opinion
- § 16:46 —Evaluation
- § 16:47 *Pinter* sellers

E. USE OF INTERSTATE COMMERCE OR THE MAILS

- § 16:48 Introduction
- § 16:49 Jurisdictional means
- § 16:50 Jurisdictional connection

F. TENDER OF SECURITIES: RESCISSION

- § 16:51 Generally

G. STATUTE OF LIMITATIONS

- § 16:52 Introduction
- § 16:53 Within one year of violation
- § 16:54 No more than three years after public offering
- § 16:55 Equitable tolling

H. RELIEF AVAILABLE

- § 16:56 Introduction
- § 16:57 Consideration paid
- § 16:58 Interest
- § 16:59 Restitution to seller
- § 16:60 Attorney's fees

I. AFFIRMATIVE DEFENSES

- § 16:61 Proof of compliance or exemption
- § 16:62 Rule 508
- § 16:63 In pari delicto—Introduction
- § 16:64 —Judicial interpretation

V. SECTION 12(a)(2)

A. INTRODUCTION

- § 16:65 An overview
- § 16:66 Elements of a Section 12(a)(2) claim
- § 16:67 Scope: *Gustafson v. Alloyd Co.*—Background
- § 16:68 Scope: *Gustafson v. Alloyd Company, Incorporated*—Majority opinion
- § 16:69 —Dissenting opinions
- § 16:70 —Implications
- § 16:71 —Open questions
- § 16:72 Relationship to other civil liability provisions and theories
- § 16:73 Arbitration
- § 16:74 Proper Forum and Forum Selection Provisions

B. PERSONS HAVING STANDING TO SUE

- § 16:75 Introduction

- § 16:76 Who Is the purchaser?
- § 16:77 Defining a purchase
- § 16:78 Plaintiff as representative for purchaser

C. PERSONS WHO ARE LIABLE: SELLER REQUIREMENT

- § 16:79 Introduction
- § 16:80 *Pinter* test—Introduction
- § 16:81 —Technical seller
- § 16:82 —Successful solicitor—Solicitation
- § 16:83 — —Proper motivation
- § 16:84 Potential sellers—Underwriters
- § 16:85 —Broker-dealers
- § 16:86 —Issuers
- § 16:87 —Directors, officers and trustees
- § 16:88 —General partners
- § 16:89 —Attorneys
- § 16:90 —Accountants
- § 16:91 —Banks, finance companies, and other lenders
- § 16:92 —Insurance companies
- § 16:93 —Securities rating service

D. USE OF INTERSTATE COMMERCE OR THE MAILS

- § 16:94 Introduction
- § 16:95 Jurisdictional means
- § 16:96 Jurisdictional connection

E. “BY MEANS OF”

- § 16:97 Introduction
- § 16:98 Judicial interpretation

F. PROSPECTUS OR ORAL COMMUNICATION

- § 16:99 Introduction
- § 16:100 Prospectus defined
- § 16:101 Oral communications

G. MATERIAL MISSTATEMENT

- § 16:102 Introduction
- § 16:103 Materiality defined
- § 16:104 Critical moment in time
- § 16:105 Facts
- § 16:106 The bespeaks caution doctrine—Introduction
- § 16:107 —The *Trump Casino* decision
- § 16:108 Material misstatement-Statutory safe harbor

H. IGNORANCE OF UNTRUTH OR OMISSION

- § 16:109 Overview
- § 16:110 Refuting buyer’s allegation

TABLE OF CONTENTS

I. TENDER OF SECURITIES: RESCISSION

§ 16:111 Generally

J. STATUTE OF LIMITATIONS

§ 16:112 Introduction

§ 16:113 One-year limitation

§ 16:114 The Statute of Repose: Three-year limitation

K. RELIEF AVAILABLE

§ 16:115 Background

§ 16:116 Federal case law

L. AFFIRMATIVE DEFENSE

§ 16:117 Introduction

§ 16:118 Lack of possible knowledge—Introduction

§ 16:119 —Application of due care standards

§ 16:120 Lack of loss causation

M. SEC WHISTLEBLOWER PROGRAM

§ 16:121 General and SEC and DOJ Revisions

§ 16:122 Whistleblower Protection and Severance and Confidentiality Agreements

N. SEC DISGORGEMENT AUTHORITY

§ 16:123 Legislative Grant of Authority

VI. SEC: CYBER/DIGITAL ASSETS/CRYPTOCURRENCY ENFORCEMENT

§ 16:124 Definitions; SEC Enforcement Policy; White House Policy, and State UCC and Proposed Article 12 of UCC

§ 16:125 Cybersecurity and Infrastructure Security Agency Act of 2018

§ 16:126 SEC List of Cryptocurrency Enforcement Actions

§ 16:127 Stablecoins

§ 16:128 Non-Fungible Tokens or “NFTs”

§ 16:129 Cryptocurrency Trading Platforms

§ 16:130 Crypto Lending and SEC Enforcement

VII. ANTI-TOUTING

§ 16:131 Anti-Touting Prohibition

APPENDIX 16A. California Application for Approval of Repurchase Offer

Table of Laws and Rules

Table of Additional Authorities

Table of Cases

Index