

Table of Contents

CHAPTER 1. AN OVERVIEW

- § 1:1 Introduction. Overview of Regulation D's Purpose and Development
- § 1:2 Trump Administration 2025 De-Regulation Initiatives impact on SEC Regulation; New SEC Guidance affecting Regulation D; New Pending Congressional Legislation
- § 1:3 SEC Summary of Capital-Raising private and limited securities offering exemptions
- § 1:4 Importance of Regulation D in raising working capital and tension between Republican and Democrat Commissioners re: Regulation D
- § 1:5 Background
- § 1:6 Policy implications: the SEC's view
- § 1:7 2023 SEC Report to Congress on Accredited Investors
- § 1:8 Policy implications: the commission's view—Modification of prior exemptions
 - § 1:9 — —Rule 504 vs. Rule 240
 - § 1:10 — — —Aggregate sales price
 - § 1:11 — — —Brokerage commissions
 - § 1:12 — — —Limitation on number of beneficial owners
 - § 1:13 — — —Manner of offering and resales
 - § 1:14 Policy implications: the Commission's view—Modification of Prior/ Rescinded Exemptions—Rule 505 vs. Rule 242
 - § 1:15 — — —Type of issuer
 - § 1:16 — — —Disclosure
 - § 1:17 — — —Aggregate sales price
 - § 1:18 — — —Accredited Investors
 - § 1:19 Policy implications: the commission's view—Modification of prior exemptions—Rule 506 vs. Rule 146
 - § 1:20 — — —Sophistication
 - § 1:21 — — —Disclosure documents
 - § 1:22 — — —Quantity of purchasers
 - § 1:23 —Distinction between reporting and nonreporting businesses—Regulation as proposed
 - § 1:24 —Regulation as adopted
 - § 1:25 —Impact on exemptions under section 4(a)(5) and Regulation A
 - § 1:26 —Relationship between federal and state regulation—Introduction
 - § 1:27 —Rule 504
 - § 1:28 —Rule 505
 - § 1:29 —Rule 506
 - § 1:30 The 1989 and 1992 amendment programs—Introduction
 - § 1:31 Changes to Rule 501(a)
 - § 1:32 Aggregate offering price
 - § 1:33 Calculation of number of purchasers
 - § 1:34 Purchaser representative
 - § 1:35 Information requirements
 - § 1:36 Demonstrating the restricted nature of securities sold
 - § 1:37 Revisions to Rules 504, 505, and 506
 - § 1:38 Rules 507 and 508
 - § 1:39 Synopsis of Regulation D—Preliminary notes—Rule 500

- § 1:40 Rules 501 Through 503
- § 1:41 Rule 504 and Compliance
- § 1:42 Rule 505
- § 1:43 Rule 506
- § 1:44 Rule 507
- § 1:45 Rule 508
- § 1:46 Regulation D in operation—Effective dates
- § 1:47 —Interpretative letters and releases and Compliance Disclosure and Interpretations
- § 1:48 —Statutory authority
- § 1:49 End of the Chevron Doctrine
- § 1:50 Regulation D in operation—Scope of regulation
- § 1:51 —Margin requirements
- § 1:52 —All or none offerings
- § 1:53 —Coincident offers and sales to foreign investors
- § 1:54 —How to use the regulation
- § 1:55 Commission’s comparative table
- § 1:56 Adopted and proposed revisions of Regulation D: 2007 through 2016

CHAPTER 2. COMMON DEFINITIONS: Rule 501

I. IN GENERAL

- § 2:1 Introduction

II. ACCREDITED INVESTOR: Rule 501(a)

- § 2:2 Introduction—An overview
- § 2:3 Identifying the “person”
- § 2:4 1988 Reform and reorganization—Elimination of \$150,000 purchaser accreditation standard
- § 2:5 Reform and reorganization—Redesignations
- § 2:6 Certain institutional investors: Rule 501(a)(1)
- § 2:7 Private business development companies (Rule 501(a)(2)) and Family Offices/Clients (Rules 501(a)(12), (13))—Introduction
- § 2:8 Business development company: Defined under Investment Company Act
- § 2:9 —Closed-End company
- § 2:10 —Limitation on investments: Sections 55(a)(1) through (3)
- § 2:11 —Significant managerial assistance
- § 2:12 —Election under section 54(a)
- § 2:13 Business development company: Defined under Investment Advisers Act; Rural Business Investment Company
- § 2:14 Summary
- § 2:15 Tax-Exempt and for-profit organizations: Rule 501(a)(3)
- § 2:16 —Tax-Exempt organizations—Tax-Exempt status
- § 2:17 —Total assets in excess of \$5 million
- § 2:18 —Purpose of organization
- § 2:19 —For-profit organization
- § 2:20 Directors, executive officers, and general partners: Rule 501(a)(4)
- § 2:21 Natural persons: \$1 million net worth test: Rule 501(a)(5)
- § 2:22 Natural persons: Income test: Rule 501(a)(6)
- § 2:23 Trusts: Rule 501(a)(7)

TABLE OF CONTENTS

- § 2:24 Entities made up of certain accredited investors: Rule 501(a)(8)
- § 2:25 —Eligible entities
- § 2:26 —Equity owners
- § 2:27 New Categories of Accredited Investor added as of December 8, 2020—Rule 501(a)(9), (10), (11), (12) and (13)
- § 2:28 Natural Persons who are Professionals (Rule 501(a)(10)) adopted in 2020 and Proposed, Not Adopted Rule 509 (2006)

III. AFFILIATES

- § 2:29 Rule 501(b)

IV. AGGREGATE OFFERING PRICE: RULE 501(c)

- § 2:30 Introduction
- § 2:31 Payments for issuance of securities
- § 2:32 Determining the sum of consideration
- § 2:33 Valuation of non-cash consideration

V. BUSINESS COMBINATION

- § 2:34 Rule 501(d)

VI. CALCULATION OF NUMBER OF PURCHASERS

- § 2:35 Rule 501(e)
- § 2:36 Rule 501(e)(1)
- § 2:37 Rule 501(e)(2)—General rule
- § 2:38 —Specific purpose exception
- § 2:39 —Certain non-contributory employee benefit plans
- § 2:40 —Purchasers not United States citizens or residents

VII. EXECUTIVE OFFICER

- § 2:41 Rule 501(f)

VIII. FINAL ORDER

- § 2:42 Rule 501(g)

IX. ISSUER: RULE 501(h)

- § 2:43 General rule
- § 2:44 Limited partnerships
- § 2:45 Special problem: determining the issuer of equipment trust certificates—
Equipment trust certificate
- § 2:46 Importance under Regulation D

X. PURCHASER REPRESENTATIVE

- § 2:47 Rule 501(i)
- § 2:48 —Independence
- § 2:49 —Sophistication
- § 2:50 —Acknowledgment by purchaser
- § 2:51 —Disclosure statement

CHAPTER 3. GENERAL CONDITIONS: RULE 502

I. IN GENERAL

§ 3:1 Introduction

II. INTEGRATION: NEW RULE 152 AND FORMER RULE 502(A)

§ 3:2 2020 Revision of SEC Integration Policy—New Rule 152 replaces five factor integration test

§ 3:3 Part of an offering concept—Safe harbor provisions in operation under Superseded Integration Rule 502(a)—An overview

§ 3:4 Part of an Offering Concept—Sales under employee benefit plans and Rule 701—Introduction

§ 3:5 Part of an offering concept—Sales under employee benefit plans and Rule 701—Limited Exception under Superseded Rule 502(a)

§ 3:6 —Sales under employee benefit plans—Offerings under Regulation D

§ 3:7 —Threat of integration

§ 3:8 —Sales under employee benefit plans under Superseded Rule 502(a)—Outside the safe harbor: traditional integration factors—Former Five Factors Test

§ 3:9 —Former, Pre-2021 Rule 152

§ 3:10 —Commencement, Termination, and Completion of Offerings (New Rules 152(c) and 152(d))

§ 3:11 —Single business enterprise: Related problem—SEC staff view

§ 3:12 —ABA task force guidelines

§ 3:13 —Judicial View under Superseded Integration Framework

§ 3:14 —Simultaneous foreign offerings

III. INFORMATION REQUIREMENTS

§ 3:15 Rule 502(b)

§ 3:16 —Accredited investors only

§ 3:17 —Non-accredited investors only

§ 3:18 —Written disclosure

§ 3:19 — — —Where issuer is not subject to reporting requirements

§ 3:20 — — — —Non-financial statement information

§ 3:21 — — — —Financial statement information

§ 3:22 Rule 502(b) Non-Accredited Investors Only—Written Disclosure—Where Issuer is not subject to reporting requirements—Financial Statement Disclosures; Former Rule 502(b) for Offerings up to \$2 million

§ 3:23 Rule 502(b)—Non-Accredited Investor Only—Written Disclosure—Where Issuer is not Subject to Reporting Requirements—Financial Information Disclosures; Former Rule 502(b) for Offerings up to \$7.5 million

§ 3:24 New Rule 152—Non-Accredited Investor Only—Written Disclosure—Where Issuer is not Subject to Reporting Requirements—Financial Information Disclosures; Former Rule 502(b) for Offerings up to \$7.5 million

§ 3:25 Rule 502(b)—Non-accredited investors only—Written disclosure—Where issuer is not subject to reporting requirements—Foreign private issuers

§ 3:26 — — —Where issuer is subject to reporting requirements

§ 3:27 — —Exhibits

§ 3:28 — —Opportunity for questions and answers

§ 3:29 — —Disclosure of resale limitations

§ 3:30 — —Special disclosure in business combinations

TABLE OF CONTENTS

§ 3:31 —Both accredited and non-accredited investors

IV. LIMITATION ON MANNER OF OFFERING: RULE 502(c)

- § 3:32 Introduction—Scope and theory
- § 3:33 Framework for analysis
- § 3:34 Number of persons solicited: How relevant?
- § 3:35 Foreign offerees
- § 3:36 Specific exceptions
- § 3:37 Rule 135c notice
- § 3:38 —Rule 135e offshore communications
- § 3:39 Relationship between issuer and person making communication—
Communications by issuer
- § 3:40 Advertisements by a third person—Affiliates
- § 3:41 Non-affiliates—Conceptual framework
- § 3:42 —Staff interpretations
- § 3:43 Relationship between person making communication and prospective
offeree—Introduction
- § 3:44 Issuer as offeror
- § 3:45 Affiliate as offeror—Introduction
- § 3:46 Establishing business relationship
- § 3:47 —Substantive relationship
- § 3:48 —Pre-existing relationship
- § 3:49 Institutional advertising
- § 3:50 Non-affiliate as offeror
- § 3:51 —Recruitment programs
- § 3:52 —Establishing substantive relationship
- § 3:53 Opposition to requirement of pre-existing substantive relationship
- § 3:54 Relationship between person making communication and both issuer and
prospective offeree
- § 3:55 Timing factor
- § 3:56 —Conditioning of market by issuer
- § 3:57 Evidence of agency
- § 3:58 Proof of substantive relationships with offerees
- § 3:59 Indicator of pre-existing relationship
- § 3:60 Subject matter of solicitation
- § 3:61 The twilight zone in Rule 506 offerings
- § 3:62 Suggested reform
- § 3:63 —Adopt a new exemption
- § 3:64 —Lift ban on general solicitation

V. LIMITATIONS ON RESALE: RULE 502(d)

- § 3:65 Basic requirements
- § 3:66 Removal of restrictive legends

CHAPTER 4. FILING OF FORM D NOTICE AND RULE 503

- § 4:1 An Overview—Rules 503; Filing Form D and Form ID
- § 4:2 SEC filing guide for Form D; explanation of terms used in Form D; SEC
mandating electronic filing of Form D
- § 4:3 Timing: Events requiring a filing on Form D or an amendment to a
previously filed Form D

- § 4:4 Timing—Initial filing: general
- § 4:5 Timing—Initial filing: minimum-maximum
- § 4:6 —Initial filing: employee stock option plan
- § 4:7 —Initial filing: aborted transaction
- § 4:8 Timing—Amendments to Initial Filing
- § 4:9 Procedure
- § 4:10 SEC Form D: Contents and SEC Compliance and Disclosure Interpretations
- § 4:11 SEC Form D Data Sets Information—Download Information from Form D Filings

CHAPTER 5. EXEMPTION FOR SALES OF SECURITIES NOT EXCEEDING \$10 MILLION—RULE 504

I. BACKGROUND

- § 5:1 Introduction

II. ELIGIBLE ISSUERS: RULE 504(A)

- § 5:2 Eligible issuers: Rule 504(a)—General rule
- § 5:3 Eligible issuers: Rule 504(a)—Exclusion of investment companies
- § 5:4 —Exclusion of blank check companies

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

- § 5:5 General conditions—An overview
- § 5:6 —The general conditions
- § 5:7 —Exceptions to general conditions
- § 5:8 —Rule 504: 1999—January 2017
- § 5:9 —Exceptions to general conditions—Rule 504: 1992-April 1999
- § 5:10 — —Pre-1992 Rule 504
- § 5:11 —Offering made in one or more states where the securities were not registered
- § 5:12 —Offering made exclusively in states where the securities were registered—An overview—States that provide for registration
- § 5:13 —States with no provision for registration
- § 5:14 —States with no provision for State Registration—Resales; SEC Rule 15c2-11

IV. SPECIFIC CONDITIONS: RULE 504(B)(2)

- § 5:15 Specific condition: maximum offering price—Introduction
- § 5:16 —An analysis
- § 5:17 — —Valuation of securities to be offered—General rule
- § 5:18 — — —Limitation on aggregate offering price: Business combinations
- § 5:19 — —Applicable period of time for calculating aggregate offering price
- § 5:20 — —Relevant amounts—Maximum
- § 5:21 — — —Deductions
- § 5:22 — —Deductions from ceiling: Relevant transactions
- § 5:23 — —“Offering” for purposes of Rule 504(b)(2)
- § 5:24 — —Pre-1992: Special \$500,000 maximum
- § 5:25 —Illustration of Rule 504(b)(2) in operation effective March 15, 2021

TABLE OF CONTENTS

- § 5:26 —Specific condition—Pre-1992 specific condition: advice about limitations on resale

V. BAD ACTOR DISQUALIFICATIONS: RULE 504(B)(3)

- § 5:27 Introduction—Bad Actor Disqualification; SEC Guidance
§ 5:28 SEC Compliance and Disclosure Interpretations for Bad Actor Disqualification under Regulation D
§ 5:29 Impact of Rule 506(d) and Submission of Waiver Requests
§ 5:30 Sample Waiver Request from Bad Actor Disqualification

CHAPTER 6. REPEALED RULE 505 FOR SALES NOT EXCEEDING \$5 MILLION

I. BACKGROUND: REMOVAL OF RULE 505 EFFECTIVE MAY 22, 2017

- § 6:1 Introduction

II. ELIGIBLE ISSUERS: FORMER RULE 505(A)

- § 6:2 Introduction
§ 6:3 Eligible issuers: former Rule 505(a)—Small business investment companies

III. GENERAL CONDITIONS: FORMER RULE 505(B)(1)

- § 6:4 Overview

IV. SPECIFIC CONDITIONS: FORMER RULE 505(B)(2)

- § 6:5 Introduction
§ 6:6 Specific conditions: former Rule 505(b)(2)—Limitation on aggregate offering price
§ 6:7 —Limitation on number of purchasers
§ 6:8 —Disqualifications—Introduction
§ 6:9 — —Overview
§ 6:10 Covered Persons: Rule 262(a)
§ 6:11 Disqualifying Events: Rule 262(a)(1) through Rule 262(a)(8)
§ 6:12 Disqualifying events: Rule 262(a) of Regulation A and former Rule 505 of Regulation D
§ 6:13 Avoidance of disqualification

V. FEDERAL-STATE COORDINATION

- § 6:14 Introduction
§ 6:15 Federal-state coordination—NASAA uniform limited offering exemption

CHAPTER 7. EXEMPTION FOR LIMITED OFFERS AND SALES WITHOUT REGARD TO DOLLAR AMOUNT OF OFFERING: Rule 506

I. BACKGROUND

- § 7:1 Introduction

II. ELIGIBLE ISSUERS: RULE 506(A)

- § 7:2 Statutory basis
- § 7:3 Eligible issuers and transactions: Rule 506(a)—Introduction
- § 7:4 Eligible issuers and transactions: Rule 506(a)—Raising capital
- § 7:5 —Business combinations

III. OFFERINGS SUBJECT TO LIMITATION ON MANNER OF OFFERINGS: RULE 506(B)

- § 7:6 Overview

A. GENERAL CONDITIONS: RULE 506(B)(1)

- § 7:7 Incorporation of Rule 501 and Rule 502

B. SPECIFIC CONDITIONS: RULE 506(B)(2)

- § 7:8 Specific conditions: Rule 506(b)(2)—Limitation on number of purchasers
- § 7:9 Limitation on nature of purchasers
- § 7:10 Judicial interpretation

IV. OFFERINGS NOT SUBJECT TO LIMITATION ON MANNER OF OFFERING: RULE 506(C)

- § 7:11 Background
- § 7:12 Overview

A. GENERAL CONDITIONS: RULE 506(C)(1)

- § 7:13 Incorporation of Rule 501 and Rule 502(a) and (d)

B. SPECIFIC CONDITIONS: RULE 506(C)(2)

- § 7:14 All purchasers are accredited investors
- § 7:15 Case Law and Investor Verification

V. BAD ACTOR DISQUALIFICATION: RULE 506(D)

- § 7:16 Introduction
- § 7:17 Covered Persons: Rule 506(d)(1)
- § 7:18 Disqualifying Events: Rule 506(d)(1)(i) through (viii)
- § 7:19 Avoidance of Disqualification

VI. FEDERAL PREEMPTION

- § 7:20 Federal pre-emption

CHAPTER 8. VIOLATIONS: Rules 507 and 508

- § 8:1 Introduction
- § 8:2 Rule 507—Possibility of disqualification
- § 8:3 —Removal of disqualification
- § 8:4 Rule 508—Introduction
- § 8:5 —Violation not intended for protection of complaining party
- § 8:6 —Violation insignificant to offering as a whole—Introduction

TABLE OF CONTENTS

- § 8:7 — —Violations excluded from Rule 508
- § 8:8 — —Violations subject to the rule
- § 8:9 — —Insignificant violations
- § 8:10 — — —Evaluation of regulation D conditions and requirements
- § 8:11 — — —Evaluation of particular facts
- § 8:12 — —Issuer's good faith and reasonable attempt to comply

CHAPTER 9. UNUSUAL NONPUBLIC OFFERINGS: REGULATORY CHALLENGES

- § 9:1 Introduction
- § 9:2 —Need for an exemption—Free shares
- § 9:3 Gypsy swaps
- § 9:4 Private transactions in contemplation of public offering
- § 9:5 —Pre-filing transactions
- § 9:6 —Post-filing transactions
- § 9:7 Restructured transactions—Private to public—Abandoned nonpublic offerings
- § 9:8 —PIPE transactions
- § 9:9 —Private equity lines
- § 9:10 —A/B exchange offers
- § 9:11 —Public to private—Limited public offerings
- § 9:12 — —Withdrawn registrations
- § 9:13 Use of the internet in Regulation D transactions
- § 9:14 Cryptocurrencies/Coins and SAFT's
- § 9:15 SEC on use of electronic media and internet securities offerings
- § 9:16 Tax Cuts and Jobs Act of 2017—Investing in qualified opportunity zones under regulation D

CHAPTER 10. COORDINATION AND COMPATIBILITY: A SURVEY OF STATE BLUE SKY LAWS

- § 10:1 Introduction—Blue Sky Law Exemptions
- § 10:2 An overview of federal-state registration exemptions; Coordination with State Blue Sky Laws and CR-SCOR
- § 10:3 Rule 504 transactions
- § 10:4 —Explicit efforts to coordinate directly
- § 10:5 Rule 504 and Blue Sky Laws; Coordination
- § 10:6 Rule 504 transactions—Possible exemptions in the absence of coordination
- § 10:7 —Special registration procedure
- § 10:8 Former Rule 505 transactions
- § 10:9 —Explicit efforts to coordinate directly
- § 10:10 Former Rule 505 transactions—Coordination as a result of general regulation
- § 10:11 New York State Private Offering Reform
- § 10:12 Former Rule 505 transactions—Possible exemptions in absence of coordination—Limited number of offerees or purchasers
- § 10:13 — —Private offerings
- § 10:14 — —Limited number of beneficial owners
- § 10:15 — —Accredited investor exemption
- § 10:16 —Special registration procedure
- § 10:17 Rule 506 transactions
- § 10:18 —After NSMIA: Federal pre-emption

- § 10:19 —Prior to NSMIA—Explicit efforts to coordinate directly
- § 10:20 — —Coordination as a result of general regulation
- § 10:21 — — —Possible exemptions in the absence of coordination
- § 10:22 — — —Special registration procedure
- § 10:23 Broker-Dealer and agent registration: Issuer and employees
- § 10:24 Mergers and acquisitions and broker registration

CHAPTER 11. AN EVALUATION: 1982–2020

- § 11:1 Introduction
- § 11:2 New directions
- § 11:3 —More issuers eligible
- § 11:4 SEC increases maximum dollar amount under Rule 504
- § 11:5 New directions—Broadening of accredited investor category
- § 11:6 —Elimination of “securities of the issuer” concept
- § 11:7 —Authorization of commissions
- § 11:8 —Coordination of federal-state exemptions
- § 11:9 Rejected proposals
- § 11:10 —Simplify disclosure
- § 11:11 —Eliminate filing requirement
- § 11:12 —Modify resale restrictions
- § 11:13 —Reduce risk of liability
- § 11:14 SEC staff analysis of Regulation D in operation
- § 11:15 —Offering and issuer characteristics—Preferred exemptions
- § 11:16 —Size of offerings
- § 11:17 —Type of business organizations
- § 11:18 —Industry group
- § 11:19 —Type of security offered
- § 11:20 —Accredited investor concept
- § 11:21 — —Offerings limited to accredited investors
- § 11:22 — —Offerings to both accredited and nonaccredited investors
- § 11:23 — —Accredited vs. nonaccredited investors: a comparison
- § 11:24 —Expenses of completed offerings—Introduction
- § 11:25 —Offerings by corporations
- § 11:26 —Offerings by partnerships

APPENDICES

- APPENDIX A1. Federal—SEC Release Number 33-6339 (August 7, 1981)
- APPENDIX A2. Federal—SEC Release Number 33-6389 (March 8, 1982)
- APPENDIX A3. Federal—SEC Release Number 33-6455 (March 3, 1983)
- APPENDIX A4. Federal—SEC Release Number 33-6758 (March 3, 1988)
- APPENDIX A5. Federal—SEC Release Number 33-6825 (March 14, 1989)
- APPENDIX A6. Federal—Form D
- APPENDIX A7. SEC Release Nos. 33-10824; 34-89669; (August 26, 2020)
- APPENDIX A8. SEC Release Nos. 33-10884; 34-90300; IC-34082; (Nov. 2, 2020)
- APPENDIX B1. NASAA Uniform Limited Offering Exemption: Adopted September 21, 1983
- APPENDIX C1. Index of SEC No-Action Letters Relating to Regulation D

TABLE OF CONTENTS

APPENDIX D1. SEC Compliance and Disclosure Interpretations for Regulation D
(Updated March 12, 2025)

APPENDIX E1. 17 C.F.R. §§ 230.501–508

Appendix F1. 2025 Presidential Executive Orders affecting SEC Regulations

Appendix G1. SEC No Action Letter Latham & Watkins, LLP, re: Verification of
Accredited Investor

Table of Laws and Rules

Table of Cases

Index