Preface to the 2026–2027 Edition

Limited Offering Exemptions: Regulation D, 2026–2027 edition, by J. William Hicks, contains an in-depth analysis of the broad-based and far-reaching Regulation D under the Securities Act of 1933, as amended, which was adopted by the U.S. Securities and Exchange Commission or "SEC" on March 8, 1982, and became effective April 15, 1982. It also contains a thorough analysis of the many important changes in and interpretations of the Regulation during the 40 years since its adoption. During those 40 years, Regulation D has gained wide acceptance among attorneys, accountants, and business executives as a useful series of exemptions for selling unregistered securities. The recent amendments are tangible proof of the SEC's willingness to modify the Regulation to keep pace with the demands of the market.

With a Republican Administration in the White House in 2025 and Republican-nominated Commissioners controlling the SEC, further changes in Regulation D may occur in order to facilitate the raising of working capital through unregistered or "private" securities offerings. The 2020 changes to the SEC private offering regulatory regime, which were intended to lessen regulatory burdens, were adopted under Republican-nominated SEC Chair. The lasting impact of the Trump Administration's dramatic reduction in the federal work force and assertion of Executive Office authority over independent federal regulatory agencies is not ascertainable as of the date of this publication, but will be explored in future editions. The SEC staff has reportedly been reduced by 15%-17% by May 2025.[1]

U.S. federal and state securities laws operate under the principle that an offering of regulated securities must be either registered under the Securities Act of 1933 and applicable state securities laws or exempt from registration. Securities offerings that are exempt from registration under Section 5 of the Securities Act of 1933, "exempt offering", fall under two kinds of exempt offerings: "private" and "limited" offerings (although the terms can be used interchangeably in common usage). Exemptions based on Section 4(a)(2) of the Securities Act of 1933, being Rule 506(b) and 506(c) of Regulation D, are deemed to be exempt from registration due to being "private" offering and exemptions based on Section 3(b), like Rule 504 and Regulation A, of that act are deemed to be exempt from registration as "limited" offerings— being offerings that Congress or SEC has deemed to be so limited in scope or amount or nature as to not require the regulatory protections of the registration requirement.

Exempt securities offerings, consisting of private securities offerings and limited securities offerings, are a principal source of working capital. According to the SEC: "In 2019, registered offerings [under Section 5 of the Securities Act of 1933] accounted for $1.2 trillion (30.8 percent) of new capital, compared to approximately $2.7 trillion (69.2 percent) that we estimate was raised through exempt 203 offerings.[599] Of the approximately $2.7 trillion estimated as raised in exempt offerings in 2019, the following table shows the amounts that we estimate were raised

[1] US SEC buyouts hit legal, investment divisions hardest, data shows, by Douglas Gillison and Chris Prentice, Reuters.com, May 16, 2025, view at URL: https://www.reuters.com/business/world-at-work/secs-legal-investment-markets-divisions-cut-up-19-staff-after-buyout-program-2025-05-15/

under each of the identified exemptions. [600]"[2]

"Table 5: Overview of amounts raised in the exempt market in 2019

Exemption	Amounts Reported or Estimated as Raised in 2019
Rule 506(b) of Regulation D	$1,492 billion
Rule 506(c) of Regulation D	$66 billion
Regulation A: Tier 1	$0.044 billion
Regulation A: Tier 2	$0.998 billion
Rule 504 of Regulation D	$0.288 billion
Regulation Crowdfunding	$0.062 billion
Other Exempt Offerings	$1,167 billion

Footnotes: 599 Unless otherwise indicated, information in this release on Regulation D, Regulation A, and Regulation Crowdfunding offerings is based on analyses by staff in the Commission's Division of Economic Risk and Analysis of data collected from SEC filings; 600 "Other exempt offerings" includes Section 4(a)(2), Regulation S, and Rule 144A offerings. The data used to estimate the amounts raised in 2019 for other exempt offerings includes: (1) offerings under Section 4(a)(2) of the Securities Act that were collected from Thomson Financial's SDC Platinum, which uses information from underwriters, issuer websites, and issuer Commission filings to compile its Private Issues database; (2) offerings under Regulation S that were collected from Thomson Financial's SDC Platinum service; and (3) resale offerings under Rule 144A that were collected from Thomson Financial SDC New Issues database, Dealogic, the Mergent database, and the Asset?Backed Alert and Commercial Mortgage Alert publications, to further estimate the exempt offerings under Section 4(a)(2) and Regulation S. We include amounts sold in Rule 144A resale offerings because those securities are typically issued initially in a transaction under Section 4(a)(2) or Regulation S but generally are not included in the Section 4(a)(2) or Regulation S data identified above. These numbers are accurate only to the extent that these databases are able to collect such information and may understate the actual amount of capital raised under these offerings if issuers and underwriters do not make this data available. The data on Rule 144A debt offerings from Mergent is available only through the end of August 2019. We have extrapolated the data to obtain a full calendar year."[3]

Rule 506(b), especially Rule 506(b) offerings to accredited investors only, is and continues to be the primary private/limited securities offering exemption from registration relied upon by issuers to raise capital. Rule 506(b) has the most utility and fewest compliance burdens in comparison to other private/limited exemptions.Regulation D consists of Rules 501 – 508 (17 C.F.R. § § 230.501-508). Rule 504 and Rule 506 are the safe harbor exemptions from registration for private or limited securities offerings. Rule 505 was another safe harbor exemption, but it was repealed by the SEC, effective May 22, 2017. Rule 506(b) of Regulation D is the primary safe harbor exemption from registration under Section 5 of the Securities Act of 1933, as amended, for private securities offerings. The vast majority of privately raised equity capital is raised under Rule 506(b) of Regulation D, especially since National Securities Markets Improvement Act of 1996 ("NSMIA") amended Section 18 of the Securities Act to pre-empt state or "Blue Sky" substantive review of certain securities offerings, including private securities offerings

[2] SEC Release Nos. 33-10884; 34-90300; IC-34082; File No. S7-05-20, Nov. 2, 2020, pp. 202-203, view at URL: https://www.sec.gov/rules/final/2020/33-10884.pdf.

[3] *Id*.

under Rule 506.

Rule 506(c)[4]was adopted to permit general solicitation and advertising (within the parameters of the release and SEC guidance for Rule 506(c) in offerings limited to accredited investors and was a Congressional effort to expand the utility of private offering exemptions. Due to the demanding verification of investor suitability requirements under Rule 506(c), Rule 506(c) has not been widely used. In an effort to improve the utility of Rule 506(c), the SEC adopted a No Action Letter position in 2025 in order to ease the burden of the verification of investor suitability for Rule 506(c).[5]

The SEC had private offering safe harbor exemptions prior to the 1982 adoption of Regulation D. Regulation D amalgamated prior Rules 146, 240 and 242. The statutory basis of Rule 506(b) and Rule 506(c) is Section 4(a)(2) of the Securities Act of 1933, as amended, (formerly "Section 4(2)" prior to redesignation by Jumpstart Our Business Start-ups Act of 2012 or "JOBS Act"), which states that "transactions by an issuer not involving any public offering" of securities are exempt from the registration requirements of Section 5 of the Securities Act of 1933, as amended.

"Public" and "private" are not defined in a bright line statutory definition in federal or state securities laws due to legislators' desire not to be trapped by a statutory definition. What is "public" and what is "private" is generally defined by SEC rules and guidance, case law and enforcement policies.

This comprehensive handbook contains more than 400 pages of textual explanation and analysis of the Regulation, its operation, and its role in coordinating state regulation, including a discussion of:

(1) Judicial interpretations of Regulation D, including the significant decisions Donohoe v. Consolidated Operating & Producing Corp. 982 F.2d 1130 (7th Cir. 1992), Mark v. FSC Securities Corp., 870 F.2d 331 (6th Cir. 1989), and Johnston v. Bumba, 764 F. Supp. 1263 (N.D. Ill. 1991);
(2) SEC Release Nos. 34-69959 and IA-3624; File No. S7-07-12, adopting a comprehensive regulatory regime for SPAC/public company shell offerings and de-SPAC mergers as well as adopting new Rule 145a, effective July 1, 2024;
(3) SEC Release Nos. 33-10884; 34-90300; IC-34082 (November 2, 2020) – revision of SEC private offering regulatory regime;
(4) SEC Release Nos. 33-10824; 34-89669 (August 26, 2020) – expansion of definition of accredited investor;"
(5) Securities Act Release No. 10238 (October 26, 2016), adopting amendments to Rule 504 of Regulation D, effective on January 20, 2017, and removing Rule 505 of Regulation D, effective on May 22, 2017;
(6) Securities Act Release Number 9415 (July 10, 2013), adopting Rule 506(c) that permits general solicitation and general advertising under the safe harbor for Rule 506 under Regulation D, effective September 23, 2013;
(7) Securities Act Release Number 8891 (February 6, 2008), adopting amendments to Rule 503 and revisions to Form D, effective September 15, 2008;
(8) Securities Act Release No. 7644 (February 25, 1999), adopting amendments to Rule 504 of Regulation D, effective April 7, 1999;
(9) Securities Act Release Number 7053 (April 19, 1994), adopting amendments to Rule 502(c), effective April 26, 1994;

[4] SEC Release Numbers 33-9415; 34-69959; No. IA-3624; File No. S7-07-12, July 10, 2013.

[5] SEC No Action Letter: Latham & Watkins, LLP, ; Re: Request for Rule 506(c) Interpretative Guidance (Incoming letter dated March 6, 2025). View at URL: https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-corporation-finance-no-action/latham-watkins-503c-031225

(10) Securities Act Release Number 6996 (April 29, 1993), adopting amendments to Rule 502(b), effective June 3, 1993;
(11) Securities Act Release Number 6949 (March, 11, 1992), adopting amendments to Rule 504, effective August 13, 1992;
(12) Securities Act Release Number 6825 (March 14, 1989), adopting important amendments to all of the rules and adopting two new rules, rules 507 and 508, effective April 19, 1989;
(13) Securities Act Release Number 6758 (March 3, 1988), Regulation D Revisions, which adopted significant amendments to Rules 501(a), 502(b), and 504, effective April 11, 1988;
(14) Securities Act Release Number 6455 (March 3, 1983), "An Interpretive Release on Regulation D," containing more than 90 interpretations;
(15) SEC staff interpretative responses to no-action letter requests by attorneys and business representatives;
(16) The adoption by securities administrators in various states of exemptive rules that are designed to coordinate with one or more of the exemptions under Regulation D; and
(17) Securities Act Release No. 6389 (March 8, 1982), adopting Regulation D, effective April 15, 1982.
(18) NASAA limited offering exemptions developed for Blue Sky securities laws.

The SEC Compliance and Disclosure Interpretations and No Action Letters as well as SEC enforcement actions provide valuable SEC Staff guidance for Regulation D. These resources are available through the SEC website at https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-corporation-finance-no-action/latham-watkins-503c-031225 (link "Rules, Enforcement & Compliance).

Small businesses are able to raise needed financing under exemptive rules that entirely replace the former offering exemptions under Rules 240, 242 and 146. Regulation D brings together these replacements—Rules 504, former 505 (repealed effective May 22, 2017 due to the increase in maximum amount that could be raised under Rule 504 making Rule 505 redundant) and 506—in a single coherent Regulation that contains uniform terms and conditions, a uniform notice of sales form with enforcement Rule 507, and safe harbor Rule 508. Regulation D, with its initially four expanded exemptions, represents a major effort by the SEC to assist small businesses' capital formation, and reduce the burdens imposed by the federal securities laws on raising working capital.

Thomson Reuters' Securities Law Series will track development in the law and will continue to present timely special updates, as well as revisions and supplements, to existing publications to keep practitioners abreast of changes in the law.