

In recent years, there has been a proliferation of exempt offering alternatives. In advising clients regarding which exempt offering alternative may best meet their objectives, we often suggest that they consider, among other things, the amount of capital they seek to raise, whether the ability to use general solicitation or the ability to test the waters is important to their distribution plans, which categories of investors are most likely to participate in the proposed offering, constraints on resales of the offered securities by investors, and whether state securities registration will be required. We have organized a comparative chart to frame answers to these questions for issuers and their financial intermediaries.

Exemption	Section 3(a)(11)	Rule 147	Rule 147A	Section 4(a)(2)	Rule 504 Regulation D
Is there a dollar limit?	None.	None.	None.	None.	\$10 million within prior 12 months.
Are there filing requirements?	None.	None.	None.	None.	File Form D with SEC not later than 15 days after first sale. Filing not a condition of the exemption.
Are there restrictions on the manner of offering?	No limitation other than to maintain intrastate character of offering.	No limitation other than to maintain intrastate character of offering.	General solicitation and general advertising permitted provided that sales are made only to residents of the state or territory in which the issuer is resident. Offers may be made to out-of-state residents.	No general solicitation or general advertising.	No general solicitation or general advertising unless registered in a state requiring use of a substantive disclosure document or sold under state exemption for sales to accredited investors with general solicitation.
Are there issuer and investor requirements?	Issuer and investors must be resident in state. No limitation on number of investors.	Issuer must be resident in state, using "principal place of business" and jurisdiction of organization to determine residency, and meet at least one "doing business" requirement. Investors must be resident in state, using "principal place of business" to determine residency. No limitation on number of investors.	Issuer must be resident in state, using "principal place of business" to determine residency, and meet at least one "doing business" requirement. Investors must be resident in state, using "principal place of business" to determine residency. No limitation on number of investors.	Investors must meet sophistication and access to information test so as not to need protection of registration.	Available to non-reporting companies only if they are not investment companies or blank check companies. Certain "bad actors" are disqualified from participating in Rule 504 offerings.
Are there resale restrictions?	Securities must rest within the state.	Limits on resales to persons residing within the state or territory of the offering for 6 months.	Limits on resales to persons residing within the state or territory of the offering for 6 months.	Restricted securities.	Restricted unless registered in a state requiring use of a substantive disclosure document or sold under state exemption for sale to accredited investors with general solicitation.
Are the securities exempt from blue sky?	Need to comply with state blue sky laws by registration or state exemption.	Need to comply with state blue sky laws by registration or state exemption.	Need to comply with state blue sky laws by registration or state exemption.	Need to comply with state blue sky laws by registration or state exemption.	Need to comply with state blue sky laws by registration or state exemption.

Deciding Among Exempt Offering Alternatives

Type of Offering	Rule 506(b)	Rule 506(c)	Tier 1 Regulation A	Tier 2 Regulation A	Regulation Crowdfunding
Dollar Limit	None.	None.	\$20 million within prior 12 months but no more than \$6 million by selling security holders.	\$75 million within the prior 12 months but no more than \$22.5 million by selling security holders.	Up to \$5 million in a 12-month period. When the purchaser is not an accredited investor, in a 12-month period the securities sold to such investor cannot exceed the greater of \$2,500, or 5 percent of the greater of the investor's annual income or net worth, if either the investor's annual income or net worth is less than \$124,000. Or, 10 percent of the greater of the investor's annual income or net worth, not to exceed an amount sold of \$124,000, if both the investor's annual income and net worth are equal to or more than \$124,000.
Filing Requirement	File Form D with SEC not later than 15 days after first sale.	File Form D with the SEC not later than 15 days after first sale.	File test-the-waters documents, Form 1-A, any sales material and report of sales and use of proceeds with the SEC. Item 17 of Form 1-A has been amended to allow companies the option of filing redacted material agreements. Issuers may redact confidential information from material contracts and other agreements filed as exhibits and redact information that would constitute an unwarranted invasion of personal privacy in any exhibit.	File test-the-waters documents, Form 1-A, any sales material and report of sales and use of proceeds with the SEC. Issuer subject to ongoing reporting requirements. Item 17 of Form 1-A has been amended to allow companies the option of filing redacted material agreements. Issuers may redact confidential information from material contracts and other agreements filed as exhibits and redact information that would constitute an unwarranted invasion of personal privacy in any exhibit.	Requires the preparation of a Form C, which resembles a Form 1-A.
Manner of Offering	No general solicitation or general advertising under Rule 506(b), except under Rule 148 which provides that certain "demo day" communications will not be deemed general solicitation under Rule 506(b). Under Rule 148, a communication is not deemed general solicitation or general advertising if such communication is made in connection with a seminar or meeting in which more than one issuer participates that is sponsored by college, university, or other institution of higher education, state or local government or instrumentality thereof, nonprofit organization, or angel investor group, incubator, or accelerator under certain conditions.	General solicitation permitted provided that all purchasers are accredited investors.	"Testing the waters" permitted before and after filing Form 1-A. Sales permitted after Form 1-A qualified. Under Rule 241, an issuer or any person authorized to act on behalf of an issuer may communicate orally or in writing to determine whether there is any interest in a contemplated offering of securities exempt from registration under the Securities Act. In connection with this rule and Regulation A, issuers must make generic solicitation materials publicly available as an exhibit to the offering materials filed with the SEC offering starting within 30 days of generic solicitation.	"Testing the waters" permitted before and after filing Form 1-A. Sales permitted after Form 1-A qualified. Under Rule 241, an issuer or any person authorized to act on behalf of an issuer may communicate orally or in writing to determine whether there is any interest in a contemplated offering of securities exempt from registration under the Securities Act. In connection with this rule and Regulation A, issuers must make generic solicitation materials publicly available as an exhibit to the offering materials filed with the SEC offering starting within 30 days of generic solicitation.	Offering must be made solely through a platform.

Type of Offering	Rule 506(b)	Rule 506(c)	Tier 1 Regulation A	Tier 2 Regulation A	Regulation Crowdfunding
Issuer and Investor Requirements	<p>There can be no more than 35 purchasers of securities in any 90-calendar-day period, excluding accredited investors and certain related parties of non-accredited investors.</p> <p>Certain “bad actors” are disqualified from participating in Rule 506 offerings.</p> <p>Under Rule 241, the issuer must provide purchasers with any written materials within 30 days of generic solicitation of interest to any purchaser that is not an accredited investor.</p>	<p>Under Rule 506(c), all purchasers must be accredited investors. Issuer must take reasonable steps to verify accredited investor status.</p> <p>Certain “bad actors” are disqualified from participating in Rule 506 offerings.</p> <p>An issuer is allowed to establish that an investor for which the issuer previously took reasonable steps to verify status as an accredited investor remains an accredited investor as of the time of a subsequent sale if the investor provides a written representation to that effect and the issuer is not aware of information to the contrary. A written representation will satisfy that the issuer verifies the person’s accredited investor status for 5 years from the date the person was verified as an accredited investor.</p>	<p>Issuer must be an eligible issuer. It excludes, among other categories of issuers, issuers that have not filed required reports in the two prior years under Regulation A or Section 13 or 15(d) of the Exchange Act.</p> <p>No investor requirement.</p>	<p>Issuer must be an eligible issuer. It excludes, among other categories of issuers, issuers that have not filed required reports in the two prior years under Regulation A or Section 13 or 15(d) of the Exchange Act.</p> <p>No investor requirement, but investors who are natural persons and are not accredited investors are subject to an investment limit.</p>	<p>Issuers that are not reporting companies, not funds and not subject to disqualification.</p> <p>The issuer must comply with the requirements in section 4A(b) of the Securities Act. Regulation Crowdfunding permits crowdfunding vehicles and oral communications are permitted once Form C is filed and so long as communications comply with the requirements of Rule 204.</p>
Restriction on Resale	Restricted securities.	Restricted securities.	Not restricted securities.	Not restricted securities.	Securities sold in an offering are subject to certain transfer restrictions for 1 year.
Blue Sky Exemption	Covered securities: no blue sky registration, but a notice filing may be required.	Covered securities: no blue sky registration, but a notice filing may be required.	Subject to state blue sky laws regarding pre-offering review, and filing.	No need to comply with state blue sky laws.	No need to comply with state blue sky laws.

Under Rule 241, any time prior to determining which exemption from registration an issuer may use for an offering, the issuer may communicate orally or in writing to determine whether there is interest in the potential exempt offering. The communication must state (1) the issuer is considering an offering of securities exempt from registration under the Securities Act, but has not determined a specific exemption from registration the issuer intends to rely on for the subsequent offer and sale of the securities; (2) no money or other consideration is being solicited, and if sent in response, will not be accepted; (3) no offer to buy the securities can be accepted and no part of the purchase price can be received until the issuer determines the exemption under which the offering is intended to be conducted and, where applicable, the filing, disclosure, or qualification requirements of such exemption are met; and (4) a person’s indication of interest involves no obligation or commitment of any kind.

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