

ALTERNATIVES TO REGISTRATION CHART

Type of Offering	Nature of Issuer	Dollar Limit	Manner of Offering	Offeree and Purchaser Requirements	Information Required	Filing Requirement	Restriction on Resale	Blue Sky	Other Factors
Section 4(a)(2)	No limitation, but nature of issuer may be relevant factor.	None.	Limit to manner designed to assure qualified offerees and purchasers, including no general solicitation.	All offerees and purchasers must meet sophistication and access to information test so as not to need protection of registration. Number not determinative (but has been used as rule-of-thumb).	No statutory requirements, but authority that nature and availability of information are elements of exemption.	None.	Restricted securities (resales limited to registration or exemptions). Use investment letters, legends, stop orders and disclosure of resale restrictions to police.	USA 1956 §§402(b)(8) and (9) (USA 2002 §§202(13) and (14)) exemptions may be available. §402(b)(9) (§202(14)) limits number of offerees and payment of commissions.	Uncertain standards. Issuer's burden to prove exemption available as to all offerees.
Crowdfunding Section 4(a)(6)	Not available to 1934 Act reporting companies, investment companies, blank check companies and issuers disqualified under "bad actor" provisions similar to those under Regulation D.	\$1,070,000 within prior 12 months.	Only through intermediary that is an SEC-registered broker-dealer or funding portal using an internet-based platform.	No requirements except investment limits in any 12-month period through crowdfunding of (i) the greater of \$2,200 or 5% of the lesser of annual income or net worth if either is less than \$107,000, or (ii) 10% of the lesser of annual income or net worth, but not more than \$107,000, if both are at least \$107,000.	Basic information required on Form C, including financial information tiered based on amount of offering; <ul style="list-style-type: none"> up to \$107,000, latest tax return and financials certified by officers; \$107,000 to \$535,000, financials reviewed by public accountant; above \$535,000, audited financials (reviewed for first-time issuer up to \$1,070,000). 	File Form C required information with SEC.	Restricted for one year, but can be sold immediately to accredited investors and related persons.	Exempt as "covered security," subject to state notice filing with primary state. State antifraud rules apply.	Holders do not "count" for 1934 Act Section 12(g) registration threshold. File and provide updates and annual information. Safe harbors from integration. Intermediaries subject to obligations and limitations.
Rule 504 Regulation D	Not available to 1934 Act reporting companies, investment companies or "blank check" companies.	\$5,000,000 within prior 12 months (including all Section 3(b)(1) sales and sales in violation of Section 5).	No general solicitation 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.	None.	Delivery of substantive disclosure document required for unrestricted securities status. Form U-7 meets requirement.	File Form D with SEC not later than 15 days after first sale. Filing not a condition of the exemption.	Restricted securities 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. For restricted securities, take reasonable care to limit resales as per Rule 502(d).	Need to comply with state blue sky law by registration (Form U-7 may be available) or state exemption. State crowdfunding may be available.	Represents substantial federal delegation to states. All conditions must be met but subject to Rule 508 substantial compliance relief. Adopted under Section 3(b)(1). Safe harbors from integration. May tie to state crowdfunding.
Rule 506(b) Regulation D Rule 506(c) Regulation D	No limitation, except not available to issuers disqualified under enhanced "bad actor" disqualification provisions of Rule 506(d).	None.	Rule 506(b) No general solicitation. Rule 506(c) General solicitation permitted if all purchasers are accredited investors and issuer takes reasonable steps to verify their status as such (non-exclusive safe harbors are available for verification of natural persons).	Rule 506(b) No offeree qualifications. Unlimited offerees. 35 non-accredited investors, each of which must be sophisticated alone or with purchaser representative. Unlimited accredited investors (reasonable belief test). Rule 506(c) No offeree qualifications. Unlimited offerees. Non-accredited investors not permitted; unlimited accredited investors (reasonable belief test applies after taking reasonable verification steps).	Rule 506(b) For any non-accredited investors: (A) if 1934 Act reporting company, certain reports or filings or (B) if non-reporting, company, (1) Regulation A narrative information for eligible issuers and otherwise narrative information required by Part I of applicable registration form and (2) certain audited financials depending on size of offering (with some relief possible). Rules 506(b) and 506(c) No required information for accredited investors, except for all investors disclosure of resale restrictions per Rule 502(d) and opportunity to request additional information and to ask questions.	File Form D with SEC not later than 15 days after first sale. Check box to indicate if Rule 506 (b) or (c) is being used. Filing not a condition of the exemption.	Restricted securities; take reasonable care to limit resales as per Rule 502(d).	Exempt as "covered security," subject to state fees and notice filings.	All conditions must be met but subject to Rule 508 substantial compliance relief. Adopted as safe harbor under Section 4(a)(2). Safe harbors from integration. Not deemed a public offering as a result of general solicitation if made under Rule 506(c). Section 506(c) may be used for "accredited investor crowdfunding."
Regulation A Tier 1 Tier 2	Domestic or Canadian issuers not subject to 1934 Act reporting requirements or disqualification under "bad actor" provisions of Rule 262 Not available to investment companies, blank check companies or issuers of oil, gas or mineral rights or for asset-backed securities.	Tier 1: \$20,000,000 Tier 2: \$50,000,000 within prior 12 months, but no more than 6,000,000 (Tier 1), \$15,000,000 (Tier 2) by affiliate selling security holders, subject to aggregate 30% offering price cap for all selling security holders in initial Reg. A offering and any Reg. A offering within 12 months.	"Testing the waters" permitted before filing Form 1-A (but no funds or commitments to purchase may be accepted). After Form 1-A receives SEC qualification order, sales permitted using general solicitation. Continuous or delayed offerings permitted.	None, except that non-accredited investors in Tier 2 offerings are subject to investment limits.	Simplified disclosure on Form 1-A. Current balance sheet and 2 years' related income and other financial statements, plus interims, complying with GAAP. Tier 1: Financials need not be audited unless audited available. Tier 2: Financials must be audited. Subject to ongoing semi-annual, annual and current reporting.	File Form 1-A on EDGAR; may be submitted confidentially for SEC review if publicly filed for 21 days; file sales material. Tier 1: File Form 1-Z exit report reporting sales within 30 days of offering completion. Tier 2: Include sales information in first annual report or Form 1-Z exit report. Staff review and comment; requires SEC order of qualification.	None, fully resalable (except affiliates).	Tier 1: Subject to state securities laws. NASAA has coordinated review program. States may allow "testing the waters" with added requirements, including filing before first use. Tier 2: Exempt as "covered security", subject to state fees and notice filings, including filing of offering materials.	No Section 11 liability. Generally, no integration with other offerings. Substantial compliance relief. Tier 2: Conditional exemption from 1934 Act Section 12(g) registration for securities sold in Reg. A offering. Tier 2 issuer can use Form 8-A short-form registration statement for 1934 Act registration. Ongoing reporting satisfies Rule 15c2-11; satisfies Rule 144 and 144A current information only for portion of year unless additional quarterly information provided.
Section 3(a)(11) Rule 147 Rule 147A	Section 3(a)(11) Issuer must be resident (organized and principal place of business) and doing business (interpreted to mean substantial operations in state and proceeds used for intrastate purposes) within the state. Rule 147 Issuer must be resident (organized and principal place of business) and doing business (80% of gross revenues from, 80% of assets in, 80% of net proceeds used in or majority of employees based in state) within the state. Rule 147A Issuer must be resident (principal place of business) and doing business (80% of gross revenues from, 80% of assets in, 80% of net proceeds used in or majority of employees based in the state) within the state.	None.	Section 3(a)(11) No limitation other than to maintain intrastate character of offering which includes resales (making internet solicitations difficult). Rule 147 No limitation other than to maintain intrastate character of offering (making internet solicitations difficult). Rule 147A No limitation other than to limit purchasers to residents in the state (internet solicitations possible if made with restrictions to so limit purchasers).	No limitation on number of offerees or purchasers under Section 3(a)(11), Rule 147 or Rule 147A. Section 3(a)(11) All offerees and purchasers must be resident in state (residence interpreted as domicile). Rule 147 All offerees and purchasers must be resident in state (residence is principal office of business or principal residence of individuals); reasonable belief test but obtain written representation. Rule 147A All purchasers must be resident in state (residence is principal office of business or principal residence of individuals); reasonable belief test but obtain written representation.	None.	None.	Coming to rest within the state. Take steps to police resales. Section 3(a)(11) Generally a one year period for resales within state. Rules 147 and 147A Six-month period for resales within the state.	Need to comply with state blue sky law by registration or exemption. State crowdfunding may be available (currently, typically tied to Rule 147).	Exemptions in effect before adoption of Rule 147A interpreted narrowly and difficult to maintain. Possible integration with other offerings, but safe harbors for Rules 147 and 147A. May tie to state crowdfunding.
Rule 701	Not available to 1934 Act reporting companies or investment companies. (Form S-8 available to reporting companies.)	Greater of 15% of total assets, 15% of outstanding securities of that class or \$1,000,000 within 12 months. Options counted at time of grant. Must count value of consultant and employee services.	Pursuant to a written compensatory plan or contract, including stock options. Not available for non-compensatory (i.e., capital raising) offerings.	Employees, directors, officers and employee-type consultants (including family members receiving securities by gift or domestic relations order) providing bona fide services other than in connection with a securities offering. Consultants as defined for Form S-8. No limitation on number.	None for sales of less than \$5,000,000, except for delivery of a copy of the written plan or contract. More than \$5,000,000 requires specific disclosure, including risks and financial statements.	None.	Restricted securities; restricted nature ceases, however, 90 days after the issuer becomes a reporting company (except for manner of sale requirement under Rule 144).	USA 1956 §402(a)(11) (USA 2002 §202(21)) or state rules may provide an exemption.	Exemption adopted under Sections 3(b)(1) and 28 for compensatory plans for employees and consultants. Exemption remains available for exercise of options outstanding when issuer becomes reporting company. No integration or aggregation.

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Preliminary Notes

The chart that follows is intended for use as a tool to aid business lawyers generally familiar with federal and state securities laws in making threshold analyses and decisions concerning various alternatives to federal securities registration for capital formation and equity compensation awards. It should be used with the following limitations and assumptions in mind:

1. Descriptions of various federal and state securities requirements are of necessity summaries and should not be relied on as complete and accurate statements of all the conditions required to comply with applicable law. Practitioners should consult the actual laws, regulations and forms, including relevant definitions, to refine threshold analyses made with the assistance of the chart. Unless otherwise noted, section references are to the Securities Act of 1933 (1933 Act), rule references are to rules under the 1933 Act, and the Securities Exchange Act of 1934 is referred to as the "1934 Act."
2. All securities transactions are subject to various antifraud rules that generally operate to prohibit persons engaged in the offer and sale of securities from making materially misleading statements or omissions or engaging in conduct that tends to work a fraud on purchasers or sellers of securities. A securities transaction may comply with applicable registration exemptions or requirements and nevertheless still violate one or more antifraud rules.
3. The chart does not address compliance with the specific requirements of applicable state securities registration or exemption provisions. Except as noted below, compliance with individual state securities law can be determined only by reference to the specific state statutes and rules that apply to a particular transaction and such compliance may require pre-offer or pre-sale state filings, payment of fees and filing of offering materials. The capital formation alternatives described in the chart relate principally to federal securities registration exemptions. For comparison purposes, information is provided with respect to certain provisions of the Uniform Securities Act, both the 1956 version (USA 1956) and comparable provisions of the 2002 version (USA 2002), and certain statements or policy positions of the North American Securities Administrators Association (NASAA). Section 18 of the 1933 Act makes substantive state blue sky registration requirements generally inapplicable to "covered securities," which include national securities exchange-listed securities and securities exempt under Rule 506, securities offered under Tier 2 of Regulation A and crowdfunding-offered securities.
4. The chart does not address federal or state regulatory requirements applicable to persons engaged in the business of effecting purchases and sales of securities. These persons may be required to register federally and in various states as securities broker-dealers or agents. In some cases, the involvement of an unregistered person in the purchase and sales process may jeopardize the availability of a securities registration exemption. In others, a transaction that otherwise complies with the securities registration or exemption requirements of applicable federal and state law may nevertheless fail to comply with federal or state law governing the conduct of persons involved in the purchase and sales process. This failure may give rise to its own violation of law. Additionally, an exemption may be unavailable if a "bad actor" is involved.
5. The chart is not intended to cover all securities registration alternatives and exemptions. The alternatives are intended primarily for commonly used capital formation activities by start-up and growing non-public companies. Accordingly, for example, the securities registration exemptions provided by Sections 3(a)(2), 3(a)(9) and 3(a)(10) of the 1933 Act are not covered in the chart because these exemptions are not generally used in the foregoing capital formation activities. For simplicity, (i) the chart also does not cover exemptions provided (1) by Section 4(a)(5) (which is comparable to a restricted Rule 504 offering solely to accredited investors) or (2) for Rule 144A transactions or Regulation S offshore offerings and (ii) references to "general solicitation" include both general solicitation and general advertising.
6. The chart does not include registration alternatives to full Form S-1 registration, such as Form S-3 available to some smaller public companies, subject to certain limitations. Moreover, the chart does not reflect the provisions in the Jumpstart Our Business Startups Act of 2012 (JOBS Act) that afford certain smaller companies known as "Emerging Growth Companies" reduced disclosures in registered public offerings and public company reporting for up to 5 years.
7. The chart does not address alternatives for resales, such as the so-called "4(1½) exemption," Section 4(a)(7) and Rules 144 and 144A. References to securities being "freely resalable" relate only to the restrictions imposed by the specific offering alternative. Other limitations may affect resales, such as those applicable to resales by affiliates or statutory underwriters and those imposed by state securities laws.
8. The chart reflects the law in effect on May 1, 2017, giving effect to the SEC's repeal on October 26, 2016 of Rule 505 (effective May 22, 2017). It does not reflect specific state crowdfunding exemptions adopted or proposed by a number of states that the SEC's October 26, 2016 actions revising Rule 147 and adopting Rule 147A could facilitate. In addition, the chart does not reflect the additional changes to Regulation D proposed by the SEC at the time it adopted revisions to Regulation D in 2013.

May 1, 2017