
Addendum: for use with Series 24 online course and study guide per recent regulatory updates, effective immediately

*The following are **additions** or **revisions** (as indicated) per recent regulatory updates to supplement your existing text:*

Chapter 1. Supervision of Investment Banking, Underwriting Activities and Research

A. New Issue Market – Underwriting Corporate Securities (Negotiated)

3. Transactions Exempt from the Registration Requirements of the Securities Act of 1933

Regulation D Private Placements – *summary of the regulatory update; the rest of the section remains the same:*

Under the Securities Act of 1933, Regulation D provides an exemption from SEC registration for securities offered in a private placement.

Reg D's Rule 504 allows for a private placement that can raise up to **\$10 million within 12 consecutive months** (previously, \$5 million).

Under Rule 506(b), an **unlimited amount of money** can be raised in a private placement from an **unlimited number of accredited investors** and up to **35 sophisticated, but non-accredited investors** in a 90-day period. Under Rule 506(c), **all investors must be accredited investors**, who must be verified by the issuer, and the issuer is allowed to advertise the offering.

Rule 501 – Accredited Investor – *additions to the existing text per new SEC definition:*

The definition of accredited investor is important because it is a fundamental determinant of who is eligible to participate in the private capital markets. It is a key component of registration exemptions, including private placements under Regulation D. An **accredited investor** is an investor who can buy **unregistered securities**, by virtue of an exception in the rules. Although most investments must be registered with the SEC before they can be offered for sale to investors, unregistered securities may be offered if they are only being sold to accredited investors or a limited number of non-accredited investors.

In 2020, the Securities and Exchange Commission amended and expanded the definition of accredited investor. The SEC amendment added several new categories of accredited investor, including individuals and business entities/institutional investors.

Individuals — The following individuals were added to the definition of accredited investor:

- An individual who holds a Series 7 (General Securities Representative), Series 65 (Investment Adviser Representative), or Series 82 (Private Securities Offerings Representative) license and other educational or professional certifications that the SEC may choose to designate in the future; and

- An individual who qualifies as a "knowledgeable employee" of a private fund, solely with respect to an investment in the fund. Knowledgeable employees include directors and certain executive officers of the private fund, an affiliated investment manager, and employees who participate in the investment activities of the private fund or other private funds or investment companies managed by the affiliated manager.

An individual who meets the requirements of either of these two new rules does not have to additionally meet the earned income and net worth requirements. In other words, they are independent of each other.

Spousal equivalents — When using the financial requirements that were part of the original definition (earned income and net worth) to qualify an individual as an accredited investor, individuals may now include joint income and joint net worth from "spousal equivalents." A spousal equivalent is defined as a cohabitant with a relationship generally equivalent to that of a spouse.

Under the new definition of accredited investor, "spousal equivalent" is included as follows:

- Individuals whose net worth, or joint net worth with the person's **spouse or spousal equivalent**, exceeds \$1 million at the time of the purchase, excluding the value of their primary residence; or
- Individuals with a yearly income of \$200,000 or higher in each of the two most recent years or joint income with a **spouse or spousal equivalent** exceeding \$300,000 for those years and a reasonable expectation of the same income level in the current year.

Business entities and institutional investors — In addition, the amendments to the definition of accredited investor with regard to business entities and institutional investors changed as follows:

- Confirmed that limited liability companies with \$5 million in assets may be accredited investors;
- Added SEC-registered and state-registered investment advisers, exempt reporting advisers, and rural business investment companies (RBICs);
- Added a new category for any entity, including Indian tribes, governmental bodies, funds, and entities organized under the laws of foreign countries that own investments in excess of \$5 million and that was not formed for the specific purpose of investing in the securities offered;
- Added "family offices" with at least \$5 million in assets under management and their "family clients."

4. Securities Transactions Exempt from the Registration Requirements of the Securities Act of 1933

Regulation A – General Exemptions – *section revised as follows:*

Regulation A of the Securities Act of 1933 is also known as the **small issue or small dollar exemption**. It allows small companies to raise capital from the general public in an offering that is exempt from registration. In other words, small businesses, such as start-ups or emerging companies, do not have to go through a full registration, which reduces legal fees, provides for shorter preparation times for documents, and accelerates the process.

Reg A+ is an amendment to Reg A that increased the amount of money that may be raised in an exempt offering. Under Reg A+, there are two tiers of offerings:

- **Tier 1** allows for offerings up to \$20 million in a 12-month period, including no more than \$6 million on behalf of affiliates.
- **Tier 2** can raise up to \$75 million in a 12-month period, with no more than \$22.5 million on behalf of affiliates. Tier 2 issuers must file Form 8-A, which is a shortened registration statement disclosing general information about the issuer and its securities. Tier 2 has additional requirements, including limitations on the amount of money a non-accredited investor may invest, requirements for audited financial statements and the filing of ongoing reports. Issuers filing Tier 2 offerings are not required to register or qualify with state securities regulators.

Issuers file an offering statement on Form 1-A with the SEC and distribute an offering circular to prospective buyers. The offering circular contains information about the offering and the securities being offered, investment risks, selling shareholders, use of proceeds, and the company's business, management, performance, plans and financial statements.

Reg A+ allows for additional types of solicitation, including "testing the waters." Testing the waters permits solicitation prior to filing the offering statement and is accompanied by a preliminary offering circular. This enables the issuer to determine if the offering is marketable.

Bad actor disqualification provisions disqualify the offering if the issuer, underwriter, placement agents, or the company's directors, officers or significant shareholders have been convicted of, or are subject to court or administrative sanctions for, securities fraud or related violations.

Regulation Crowdfunding – *additions to the existing text:*

Maximum offering amount of \$5 million — The aggregate amount sold to all investors by the issuer during the 12-month period preceding the date of the transaction must not be more than \$5 million.

Crowdfunding issuers are permitted to "test the waters" prior to filing an offering document with the SEC, allowing the issuer to gauge investor interest in advance.

Issuers are required to provide disclosures about the business in Form C, which is filed with the SEC. Such disclosures include the name, address, and website of the business, along with a description of the business, business plan, financial condition, and information about the directors, officers, and beneficial owners (20% or greater owners). Depending on the amount of money being raised, financial statements may additionally require review or audit by an independent public accountant.

Note that crowdfunding transactions are subject to bad actor disqualification provisions that disqualify offerings if the issuer or other covered persons have experienced a disqualifying event, such as being convicted of, or subject to court or administrative sanctions for, securities fraud or other violations of specified laws. Securities purchased in a crowdfunding transaction usually cannot be sold for one year, exposing investors to liquidity risk. Generally speaking, crowdfunding issues carry a high degree of risk because they typically involve early-stage ventures.