
Addendum: for use with Series 26 online course and study guide per recent regulatory changes, effective immediately

*The following are **additions** or **revisions** (as indicated) per recent regulatory updates to supplement your existing text. You may also review the updated content in the online course: Chapter 4, Sales Practices, Section B.1 – Securities Act of 1933 – Securities Transactions Exempt from the Registration Requirements*

Regulation A Offerings – new section in the course:

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 D Private Placements – *summary of the regulatory update*

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 – *new section in the course:*

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.

Under the original definition, the following entities or individuals were considered *accredited investors*:

- A bank, insurance company, registered investment company, business development company, or small business investment company;
- An employee benefit plan, within the meaning of the Employee Retirement Income Security Act, if a bank, insurance company, or registered investment adviser makes the investment decisions, or if the plan has total assets in excess of \$5 million;
- A charitable organization, corporation, trust, or partnership with assets exceeding \$5 million;
- A director, executive officer, or general partner of the company selling the securities;
- A business in which all the equity owners are accredited investors;
- A natural person (alone or with a spouse) who has individual net worth that exceeds \$1 million at the time of the purchase exclusive of their primary residence;
- A natural person with income exceeding \$200,000 in each of the 2 most recent years or joint income with a spouse exceeding \$300,000 for those years and a reasonable expectation of the same income level in the current year.

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."

Number of purchasers applies as follows:

- A corporation, partnership or other entity are counted as one purchaser. However, if that entity is not an accredited investor and is organized for the specific purpose of acquiring the securities, then each beneficial owner of equity securities would be counted as a separate purchaser;
- A noncontributory employee benefit plan where the trustee makes all investment decisions is counted as one purchaser;
- Clients of an investment adviser or customers of a broker/dealer are considered the purchasers; and
- Any accredited investor is a purchaser.

Issuer is a legal entity (a corporation, investment fund, government entity) that offers securities to investors.

Regulation Crowdfunding – new section in the course:

Regulation Crowdfunding (Reg CF) allows small businesses to raise capital from a large number of investors using the Internet, provided that the investments on the part of individual investors are limited. The broker/dealers and funding portals that use crowdfunding to offer and sell securities on behalf of the issuers must be registered with the SEC and must be FINRA members. This SEC regulation permits eligible companies, typically start-ups, to offer and sell securities to retail investors based on an exemption from registration under Section 4(a)(6) of the Securities Act of 1933, provided that the following rules are met:

- **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;
- **Investment limits*** — Non-accredited investors may rely on the greater of their annual income or net worth when calculating their investment limits. The aggregate amount sold to any non-accredited individual investor during any 12-month period by an issuer is subject to the following limitations:
 - If annual income or net worth is *less than \$107,000*, the **greater** of either **\$2,200 or 5%** of the annual income or net worth of the investor; and
 - If annual income or net worth is *equal to or greater than \$107,000*, the **greater of 10% of the annual income or 10% of the net worth** of the investor, not to exceed a maximum of \$107,000;
- All transactions must take place online through an SEC-registered intermediary, which could be either a broker/dealer or a funding portal.

*Note that there are no investment limits for accredited investors.

The following companies are **not eligible** to use the Regulation Crowdfunding exemption:

- Non-U.S. companies;
- Companies that are subject to the reporting requirements of the Securities Exchange Act of 1934;
- Certain investment companies;
- Disqualified companies under Regulation Crowdfunding's disqualification rules;

- Companies that have failed to comply with Regulation Crowdfunding's annual reporting requirements in the 2 years preceding the filing of the offering statement;
- Companies with no specific business plan; and
- Companies whose business plan involves engaging in a merger or acquisition with any unidentified company.

A **funding portal** is a broker, acting as an intermediary in a transaction involving the offer or sale of securities, that does not:

- Offer investment advice or recommendations;
- Solicit purchases, sales or offers to buy the securities displayed on its platform;
- Compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its platform; or
- Hold, manage, possess, or otherwise handle investor funds or securities.

Members must notify FINRA prior to engaging, for the first time, in a transaction involving the offer or sale of securities in reliance on Section 4(a)(6) of the Securities Act or within 30 days of directly or indirectly controlling, or being controlled by or under common control with, a funding portal.

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.