

## ALTERNATIVES TO REGISTRATION CHART

Type of Offering	Nature of Issuer	Dollar Limit	Manner of Offering <i>(See Note 6)</i>	Offeree and Purchaser Requirements	Information Required	Filing Requirement	Restriction on Resale	Blue Sky	Other Factors <i>(See Note 6)</i>
<b>Section 4(a)(2)</b>	No limitation, but nature of issuer may be relevant factor.	None.	Limit to manner designed to assure qualified offerees and purchasers, including absence of 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 resales.	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.
<b>Rule 504 Regulation D</b>	Not available to 1934 Act reporting companies, investment companies or "blank check" companies or if disqualified under "bad actor" provisions.	\$10,000,000 within prior 12 months (including all Section 3(b)(1) sales and sales in violation of Section 5).	No general solicitation. Under Rule 148 "demo days" (sponsored investor event) not general solicitation, with attendee limits if done virtually. Generic testing the waters permitted.  General solicitation permitted if registered in state requiring use of substantive disclosure document or under exemption in state for sales to accredited investors.	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 under 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. Adopted under Section 3(b)(1). All conditions must be met but subject to Rule 508 substantial compliance relief.  May tie to state crowdfunding.
<b>Rule 506(b) Regulation D</b>  <b>Rule 506(c) Regulation D</b>	No limitation, except not available if disqualified under "bad actor" provisions.	None.	Generic testing the waters permitted.  <b>Rule 506(b)</b> No general solicitation. "Demo days" not general solicitation, with attendee limits if done virtually.  <b>Rule 506(c)</b> General solicitation permitted if all purchasers are verified accredited investors (non-exclusive safe harbors available for verification of natural persons and previous investors who self-certify within 5 years).	<b>Rule 506(b)</b> No offeree qualifications. Unlimited offerees. No more than 35 non-accredited investors, in any Rule 506(b) offering in any 90-day period, each of which is sophisticated alone or with purchaser representative. Unlimited accredited (reasonable belief test).  <b>Rule 506(c)</b> No offeree qualifications. Unlimited offerees. Non-accredited investors not permitted; unlimited accredited investors but must take reasonable steps to verify.	<b>Rule 506(b)</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) Regulation A financials that may be unaudited if offering \$20,000,000 or less and audited if more.  <b>Rules 506(b) and 506(c)</b> No required information for accredited investors, except 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). Not deemed a public offering as a result of general solicitation if made under Rule 506(c).  Rule 506(c) may be used for "accredited investor crowdfunding."
<b>Crowdfunding</b>	Available to domestic issuers but not to 1934 Act reporting companies, investment companies, blank check companies or if disqualified under "bad actor" provisions.  Permits "crowdfunding vehicles" otherwise classified as investment companies.	\$5,000,000 within prior 12 months.	Testing the waters permitted before filing Form C. Oral communications permitted after filing Form C.  Only through intermediary that is an SEC-registered broker-dealer or funding portal using an internet-based platform.	No requirements except for non-accredited investors investment limits in any 12-month period through crowdfunding of (i) the greater of \$2,200 or 5% of the greater of annual income or net worth if either is less than \$107,000, or (ii) 10% of the greater of annual income or net worth, but not more than \$107,000, if both are at least \$107,000.  No requirement for accredited investors.	Basic information required on Form C, including financial information tiered based on amount of offering: <ul style="list-style-type: none"><li>Up to \$107,000, latest tax return and financials certified by officers.</li><li>\$107,000 to \$535,000, financials reviewed by public accountant.</li><li>Above \$535,000, audited financials (reviewed for first-time issuer up to \$1,070,000).</li></ul>	Include test the waters materials (if generic and used within 30 days) with Form C required information filed 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.	Adopted under Section 4(a)(6) and general authority.  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.
<b>Regulation A</b>  <b>Tier 1</b>  <b>Tier 2</b>	Available to domestic or Canadian issuers not subject to disqualification under "bad actor" provisions, but 1934 Act reporting companies eligible only if they file all required reports for prior two years.  Not available to investment companies, blank check companies or issuers of oil, gas or mineral rights or for asset-backed securities.  Limitation on type of securities that may be sold.	<b>Tier 1:</b> \$20,000,000 <b>Tier 2:</b> \$75,000,000 in prior 12 months, but no more than \$6,000,000 (Tier 1), \$22,500,000 (Tier 2) by affiliate selling security holders, subject to aggregate 30% price cap for all selling security holders in initial Reg. A offering and any Reg. A offering in 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 by unlisted company are subject to investment limits of 10% of greater of annual income or net worth if natural person or revenue or net assets if entity.	Simplified disclosure on Form 1-A. Current balance sheet and 2 years' related income and other financial statements, plus interims, complying with GAAP.  <b>Tier 1:</b> Financials need not be audited unless audited available.  <b>Tier 2:</b> Financials must be audited, with Regulation S-X smaller reporting company requirements applying for 1934 Act reporting company. Subject to ongoing semi-annual, annual and current reporting, which 1934 Act reports may satisfy.	File Form 1-A on EDGAR; may be submitted confidentially for SEC review if publicly filed for 21 days; file sales material; file generic test the waters materials as exhibit if Regulation A used within 30 days.  <b>Tier 1:</b> File Form 1-Z exit report reporting sales within 30 days of offering completion.  <b>Tier 2:</b> 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).	<b>Tier 1:</b> Subject to state securities laws. NASAA has coordinated review program. States may allow testing the waters with added requirements, including filing before first use.  <b>Tier 2:</b> 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.  <b>Tier 2:</b> 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.
<b>Section 3(a)(11)</b>  <b>Rule 147</b>  <b>Rule 147A</b>	<b>Section 3(a)(11)</b> 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.  <b>Rule 147</b> 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.  <b>Rule 147A</b> 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 state) within the state.	None.	<b>Section 3(a)(11)</b> No limitation other than to maintain intrastate character of offering which includes resales (making internet solicitations difficult).  <b>Rule 147</b> No limitation other than to maintain intrastate character of offering (making internet solicitations difficult). Generic testing the waters permitted.  <b>Rule 147A</b> No limitation other than to limit purchasers to residents in the state (internet solicitations possible if made with restrictions to so limit purchasers). Generic testing the waters permitted.	No limitation on number of offerees or purchasers under Section 3(a)(11), Rule 147 or Rule 147A.  <b>Section 3(a)(11)</b> All offerees and purchasers must be resident in state (residence interpreted as domicile).  <b>Rule 147 and Rule 147A</b> All offerees in Rule 147 and purchasers in Rule 147 and 147A 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.  <b>Section 3(a)(11)</b> Generally, a one-year period for resales within state.  <b>Rules 147 and 147A</b> 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.  May tie to state crowdfunding.
<b>Rule 701</b>	Not available to 1934 Act reporting companies or investment companies. (Form S-8 available to 1934 Act reporting companies.)	Within 12 months, greater of 15% of assets, 15% of class outstanding or \$1,000,000. Options counted at time of grant.	Under a written compensatory plan or contract; includes stock options. Not available for capital raising offerings (i.e., non-compensatory).	Unlimited number of employees, directors, officers and employee-type consultants as defined in Form S-8, providing bona fide services but not for securities offering (also in some cases family members).	None for sales up to \$10,000,000, except for delivery of a copy of the written plan or contract. More than \$10,000,000 requires disclosure, risks and financials.	None.	Restricted securities; restricted nature ceases 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.	Adopted under Sections 3(b)(1) and 28 for compensatory plans; remains available for exercise of options when issuer becomes reporting company. No integration or aggregation.

## Integration of Offerings – Rule 152

### Cautionary Note

The rule may not be relied on to avoid integration for any transaction or series of transactions that are part of a plan or scheme to avoid the registration requirements.

### General Principle

In determining whether two or more offerings are to be treated together as a single offering for purposes of registration or qualifying for an exemption from registration, offerings will not be integrated if, based on the particular facts and circumstances, the issuer can establish that each offering either complied with the registration requirements or satisfied the requirements for an exemption from registration. In making this determination:

- For an exempt offering prohibiting general solicitation, the issuer must have a reasonable belief that either (i) each purchaser in that offering was not solicited through general solicitation or (ii) a substantive relationship had been established with that purchaser prior to commencement of the offering.
- For concurrent exempt offerings permitting general solicitation, offering materials for one offering might include an offer for a separate exempt offering and, therefore, in that case, the separate exempt offering must comply with the requirements regarding offers for the exemption relied upon for that separate exempt offering.

### Safe Harbors

The rule contains the following safe harbors:

- Offerings separated by more than 30 days will not be integrated, provided in the case of an exempt offering that does not permit general solicitation that follows an offering that permits general solicitation, the issuer has a reasonable belief that either (i) each purchaser in that offering was not solicited through general solicitation or (ii) a substantive relationship had been established with that purchaser prior to commencement of the offering. However, in offerings under Rule 506(b), there may not be more than 35 non-accredited investors during any 90-day period.
- Offers and sales made in compliance with Rule 701 or Regulation S will not be integrated with other offerings.
- Offerings for which a registration statement has been filed would not be integrated with an earlier offering if the registered offering is made after termination or completion of an earlier offering for which general solicitation is not permitted or, if the terminated or completed earlier offering permitted general solicitation, if that earlier offering (i) was made only to qualified institutional buyers (QIBs) or institutional accredited investors or (ii) was terminated or completed more than 30 days before commencement of the registered offering.
- Exempt offerings for which general solicitation is permitted made after other terminated or completed offerings for which general solicitation is not permitted will not be integrated with those earlier offerings.

## Generic Testing the Waters – Rule 241

- Generic testing the waters is permitted if the issuer has not determined the exemption to use. Non-binding indications of interest may be solicited, but no solicitation or acceptance of payment or an offer to buy is permitted. This information must be disclosed to persons solicited.
- The communications will not be gun-jumping – that is, offers prohibited before filing of registration statement, but they are offers under antifraud provisions.
- May or may not involve a general solicitation. A subsequent exempt offering must comply with the exemption's requirements, including permissibility of general solicitation. Thus, testing the waters using general solicitation may not be used to identify investors for an offering in which general solicitation is not permitted (e.g., Rule 506(b)) – testing the waters may be deemed commencement of offering or considered a scheme to evade registration requirements.
- Written material used must be (i) filed with SEC if Regulation A or Regulation Crowdfunding offering commenced within 30 days of material's use and (ii) provided to non-accredited investors in a Rule 506(b) offering if securities sold within 30 days of material's use.
- Testing the waters also permitted under Regulation A (Rule 255), Regulation Crowdfunding (Rule 206), and in registered offerings (Rule 163B) but limited to QIBs and institutional accredited investors.
- Remains subject to state blue sky law compliance, especially if subsequent exempt offering does not involve state preemption.

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### 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 a separate 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. Integration principles under Rule 152 applicable to offerings described in the chart and rules for engaging in generic testing the waters under Rule 241 are addressed on the back page.
7. 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.
8. 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.
9. The chart reflects the law in effect on March 15, 2021, and includes revisions adopted by the SEC on November 2, 2020 in Release No. 33-10844. It does not reflect any temporary emergency relief.

March 15, 2021

### **Printing the Alternatives to Registration Chart**

The Alternatives to Registration Chart has been created to fit on 11x17 inch paper, folded in half to create an 8.5x11 inch “booklet.” When the Chart is folded in half, the Notes will be the “front” page and descriptive detail the “back” page. When the front page is opened, the Chart is on the “inside” and will fold out to an 11x17 inch single page.

It is best to print the Chart on a high-speed, multi-functional device (MFD) that usually can be accessed from a firm’s network. The MFD device usually has 11x17inch paper, which can be accessed from individual users’ PCs when a user initiates the “print” command that brings up a printer properties dialogue box. The user may select among properties: paper size (11x17 inches), page orientation (landscape), duplex printing (or print on both sides) and, importantly to print pages right side up, “duplex opening” to the left (or flip on short side).

If individual users are not able to modify or select these printing options, your printer may lack the appropriate features, or you may need to have your support staff make these printing options functional on your printer.

Commercial printing facilities, such as Staples, FedEx and UPS stores, should be able to print the Chart with minimal difficulties.