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Raising Capital 101

A Practical Guide to Securities Exemptions

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The Starting Point: Section 5

The moment you take money from an investor in exchange for equity, a convertible note, a SAFE, or practically any other financial instrument, you're selling a security. And selling securities without following federal and state law is illegal.¹

Not “gray area” illegal. Not “we’ll deal with it later” illegal. Actually illegal. As in, the SEC or State regulator can come after you, your investors can rescind their investments, and your company’s cap table becomes a legal minefield.

The Core Principle

An offering of securities is either (a) registered, (b) exempt, or (c) illegal. There is no “small company” exception. There is no “friends and family” exception. You need an exemption. Period.

Section 5 of the Securities Act of 1933 says that every offer and every sale of securities in the United States must be registered with the SEC. Registration means filing a detailed prospectus, getting SEC review, and complying with ongoing reporting requirements. It is expensive, time-consuming, and completely impractical for a startup raising a seed round.

The law presumes every securities transaction must be registered. If you want to skip registration, the burden is on you to prove you qualify for an exemption.² Even when you qualify, the antifraud rules still apply.³ You cannot lie to investors or omit material information regardless of which exemption you use.

The Exemptions: Your Menu of Options

We have several exemptions from registration. Each one has different rules about how much you can raise, who you can raise from, and how you can market your offering.

Regulation D: The Workhorse

¹ Securities Act of 1933, § 5, 15 U.S.C. § 77e. Section 5 is “a broadly drafted prohibition” that is “presumptively applicable to every securities transaction.” Hazen, *Treatise on the Law of Securities Regulation* § 4:2 (Nov. 2025 Update).

² *SEC v. Ralston Purina*, 346 U.S. 119 (1953); *SEC v. Cavanagh*, 445 F.3d 105 (2d Cir. 2006); Hazen § 4:2.

³ Exemptions from registration do not exempt the issuer from antifraud liability under Section 17(a) of the 1933 Act or Rule 10b-5 under the 1934 Act. Hazen § 4:2, fn. 5.

Regulation D is where the vast majority of private capital gets raised in America.⁴ In 2023, over \$2 trillion flowed through Reg D offerings, dwarfing public markets. It comes in three flavors.

Rule 506(b): The Default

If you're a startup raising a seed round, a Series A, or forming a fund, this is probably your exemption:⁵

- **No cap on how much you can raise.** \$500K or \$500M, doesn't matter.
- **Unlimited accredited investors** plus up to 35 non-accredited investors (while this is technically true, you should be cautious about including non-accredited investors).
- **State law preemption.** You don't have to register your offering in each state, just file notices.⁶
- **No mandatory federal disclosure** if you only sell to accredited investors.

You cannot advertise. You cannot post about your raise on Twitter. You cannot send mass emails to people you don't know. You need pre-existing relationships with your investors.

This is why warm introductions matter so much in startup fundraising. It's not just networking culture. It's the law.

Estimated legal cost: \$10K to \$50K+

Rule 506(c): The One Where You Can Advertise

Created by the JOBS Act in 2012, Rule 506(c) lets you use general solicitation.⁷ Social media campaigns, public pitch events, online platforms.

Every single investor must be accredited, and you must take "reasonable steps" to verify their status. No non-accredited investors allowed, no exceptions.

In March 2025, the SEC issued a no-action letter clarifying that investor self-certification combined with a minimum investment amount can satisfy the verification requirement.⁸ This was a game-changer. You can now publicly market your offering and verify investors through a simple questionnaire rather than demanding their financial documents.

⁴17 C.F.R. §§ 230.500–508; Hazen § 4:62. In 2023, over \$2 trillion was raised through Reg D offerings, far exceeding public market issuances.

⁵17 C.F.R. § 230.506(b); Hazen § 4:92.

⁶National Securities Markets Improvement Act of 1996 (NSMIA), Pub. L. No. 104-290, § 102, codified at 15 U.S.C. § 77r(b)(4)(D). NSMIA preempts state registration requirements for "covered securities" sold under Rule 506.

⁷Jumpstart Our Business Startups (JOBS) Act, Pub. L. No. 112-106, § 201 (2012); 17 C.F.R. § 230.506(c); Hazen § 4:92.

⁸SEC Division of Corporation Finance, No-Action Letter re Latham & Watkins LLP (March 12, 2025). See also Hazen § 4:62, fn. 29; Ropes & Gray, "SEC Issues No-Action Letter Clarifying Rule 506(c)" (Mar. 2025); Kirkland & Ellis, "SEC No-Action Letter Opens the Door Wider on Rule 506(c)" (Mar. 2025).

2025 Development

The March 2025 no-action letter (Latham & Watkins) significantly eased the 506(c) verification burden. A prior 2020 amendment already provided a safe harbor for re-verification of investors verified within the past 5 years. Together, these developments make 506(c) far more practical than it was at launch.

Estimated legal cost: \$10K to \$50K+

Rule 504: The Small One

Rule 504 lets you raise up to \$10 million in a 12-month period.⁹ It doesn't require investors to be accredited, and there's no mandatory federal disclosure.

The problem: Rule 504 has no state law preemption. That means you have to comply with securities laws in every state where you offer or sell. For most startups raising from investors across multiple states, 506(b) or 506(c) is the better call.

Estimated legal cost: \$5K to \$25K+

Regulation A+: The Mini-IPO

Regulation A+¹⁰ sits between a private placement and a full IPO. It comes in two tiers.

Tier 1 lets you raise up to \$20 million per year. No investor qualification requirements, but no state law preemption, which means state-by-state compliance with blue sky laws.

Tier 2 lets you raise up to \$75 million per year with state law preemption. Non-accredited investors can participate (capped at 10% of their income or net worth). Securities sold under Reg A+ are freely tradeable, with no holding period and no resale restrictions.

The trade-off is cost and complexity. You must file an offering circular (Form 1-A)¹¹ with the SEC and wait for qualification before you can sell. That process typically takes 3 to 6 months and costs \$40K to \$100K+ in legal and accounting fees.

Estimated legal cost: \$40K to \$100K+

Regulation Crowdfunding (Reg CF)

Regulation Crowdfunding lets any company raise up to \$5 million per year from virtually

⁹17 C.F.R. § 230.504; Hazen § 4:82. The \$10M ceiling was raised from \$5M in the SEC's 2020 harmonization rulemaking. *See* Facilitating Capital Formation and Expanding Investment Opportunities, Sec. Act Rel. No. 33-10884 (Nov. 2, 2020).

¹⁰17 C.F.R. §§ 230.251–263; Hazen § 4:44. Regulation A was dramatically expanded by the JOBS Act (2012) and further amended in 2020, raising the Tier 2 ceiling from \$50M to \$75M.

¹¹SEC Form 1-A, available at <https://www.sec.gov/about/forms/form1-a.pdf>.

anyone, accredited or not.¹² You must use an SEC-registered funding portal (platforms like Wefunder, Republic, or StartEngine).

Reg CF is particularly powerful for consumer-facing brands with passionate customer bases. Your customers become your investors, which creates alignment and loyalty that goes beyond the capital itself.

The trade-offs: platform fees typically run 5 to 10%, there's a one-year holding period on the securities, and you have ongoing annual reporting obligations.¹³

Estimated legal cost: \$5K to \$30K+

Regulation S: Going International

Reg S provides a safe harbor for selling securities outside the United States.¹⁴ Two conditions: the transaction must be an “offshore transaction” (no offers to people in the U.S.), and there can be no “directed selling efforts” aimed at the U.S. market.

Most companies use Reg S alongside a domestic exemption like Reg D when they have genuine international investor interest. It is not a substitute for domestic compliance.¹⁵

Intrastate Exemptions (Rules 147 / 147A)

Rules 147 and 147A exempt offerings made entirely within a single state.¹⁶ No dollar limit, no accredited investor requirement. Rule 147A is more flexible: the issuer doesn't need to be incorporated in the state, just have its principal place of business there.

One out-of-state purchaser can blow the entire exemption. That makes these rules impractical for most companies unless you're a truly local business raising from your community.

¹²Securities Act § 4(a)(6), 15 U.S.C. § 77d(a)(6); 17 C.F.R. §§ 227.100 *et seq.*; Hazen § 4:52. Added by the JOBS Act (2012); SEC rules became effective May 2016. The \$5M ceiling was raised from \$1.07M in the 2020 harmonization rulemaking.

¹³On reporting compliance, *see* Andrew A. Schwartz, “Ghosting the Crowd,” 82 Wash. & Lee L. Rev. 565 (2025) (documenting substantial noncompliance with Reg CF annual reporting obligations).

¹⁴17 C.F.R. §§ 230.901–905; Hazen § 4:116. Reg S securities are classified as “restricted securities” under Rule 144 since the 1998 amendments.

¹⁵Reg S offerings will not be integrated with concurrent Reg D offerings under the current integration framework. *See* 17 C.F.R. § 230.152(b)(2).

¹⁶Securities Act § 3(a)(11), 15 U.S.C. § 77c(a)(11); 17 C.F.R. §§ 230.147, 230.147A; Hazen § 4:25. Rule 147A was adopted in 2016 to facilitate intrastate crowdfunding. Unlike Rule 147, it does not require the issuer to be incorporated in the state.

Exemption Comparison

Exemption	Max Raise	Non-Ac-cred.	Advertise	Trade-able	Est. Cost
Rule 506(b)	Unlimited	Up to 35	No	No	\$10–50K
Rule 506(c)	Unlimited	No	Yes	No	\$10–50K
Rule 504	\$10M	Yes	Varies	No	\$5–25K
Reg A+ T2	\$75M	Yes (cap)	Yes	Yes	\$40–100K+
Reg CF	\$5M	Yes (cap)	Yes	No	\$5–30K
Reg S	Unlimited	N/A	Offshore	Varies	\$15–50K
Rule 147A	Unlimited	Yes	In-state	Varies	\$5–20K

Table 1: Securities Exemption Comparison

Accredited vs. Non-Accredited Investors

Under federal and state law, an accredited investor is someone considered financially sophisticated enough (or wealthy enough) to not need the full protections of securities registration.¹⁷ The main categories for individuals:

- Net worth over \$1 million, excluding primary residence¹⁸
- Income over \$200,000 (\$300,000 with a spouse) for each of the past two years
- Holders of certain professional licenses (Series 7, 65, or 82) in good standing

These dollar thresholds haven't changed since 1982. In 1982, about 1.8% of U.S. house-

¹⁷17 C.F.R. § 230.501(a); Hazen § 4:66. The definition was expanded in 2020 to add categories based on professional knowledge (Series 7, 65, 82 licenses), knowledgeable employees, and family offices. See Sec. Act Rel. No. 33-10824 (Aug. 26, 2020).

¹⁸The Dodd-Frank Act (2010) excluded the value of the primary residence from the net worth calculation and directed the SEC to review the thresholds periodically.

holds qualified. Today, roughly 13% qualify.¹⁹ The accredited investor definition is far more inclusive than it was originally designed to be.

Form D and Blue Sky Filings

If you're raising under Regulation D, you must file Form D electronically on the SEC's EDGAR system within 15 days of the first sale.²⁰ Failing to file doesn't technically destroy your exemption, but it can trigger SEC or State regulator enforcement and jeopardize your state law preemption.²¹

For Rule 506 offerings, federal law preempts state registration requirements. States can still require notice filings and fees. Budget \$2K to \$10K for state notice filings across multiple states.²²

Common Mistakes

The Seven Deadly Sins of Capital Raising

1. Not realizing you're selling securities (SAFEs, convertible notes, revenue-share agreements)²³
2. Accidentally blowing the general solicitation restriction under 506(b)
3. Skipping accredited investor verification under 506(c)
4. Including non-accredited investors in a 506(b) without proper disclosure
5. Not filing Form D
6. Paying unlicensed finders (broker-dealer registration required under federal and state law)²⁴
7. No subscription agreements or investor questionnaires

¹⁹Hazen § 4:66, fn. 3. Adjusted for inflation, the \$1 million threshold would be approximately \$3 million and the \$200,000 income threshold approximately \$600,000 in 2026 dollars.

²⁰17 C.F.R. § 230.503; Hazen § 4:79. Failure to file does not technically destroy the exemption. *See* Rule 507; *Hamby v. Clearwater Consulting*, 428 F. Supp. 2d 915 (E.D. Ark. 2006).

²¹In December 2024, the SEC settled charges against companies raising approximately \$300 million for failing to file Forms D, underscoring that the SEC takes filing obligations seriously. *See* Gibson Dunn, "Securities Enforcement 2024 Year-End Update" (Jan. 2025).

²²NSMIA preemption depends on actually qualifying for Rule 506. Mere attempt to qualify is insufficient. *Brown v. Earthboard Sports*, 481 F.3d 901 (6th Cir. 2007); Hazen § 4:92.

²³Hazen §§ 1:48–1:80 (discussing the definition of "security" under federal law).

²⁴Paying transaction-based compensation for investor introductions may require the finder to register as a broker-dealer. Limited exceptions exist under Securities Act § 4(c) for persons assisting with Rule 506 offerings without compensation who do not handle investor funds.

Which Exemption Is Right for You?

Raising from people you already know, no public marketing? Rule 506(b). This is the default for most startup raises and fund formations.

Want to market publicly or raise through an online platform? Rule 506(c) if you can limit to accredited investors (much easier post-2025). Reg CF if you want non-accredited investors and are raising under \$5M.

Raising \$5M+ and want non-accredited investors with freely tradeable securities? Reg A+ Tier 2. Be prepared for the cost and timeline.

Building a community of customer-investors? Reg CF. The platform requirement adds cost, but the community-building benefits can be substantial.

Truly local raise from your community? Rule 147A if everyone is in-state.

International investors? Reg S for the offshore piece, likely combined with Reg D domestically.

Most companies end up using Rule 506(b) or 506(c). That's not because the other exemptions are bad. It's because 506 offers unlimited raise amounts, state law preemption, and relatively straightforward compliance.

Get This Right From the Start

Getting this wrong early creates problems that compound. A botched exemption doesn't just mean regulatory risk today. It means every future round of funding comes with a disclosure about prior noncompliance, every potential acquirer's lawyers flag it in diligence, and every investor who participated has a potential rescission claim hanging over your cap table.

The rules aren't designed to stop you from raising money. They're designed to make sure investors get a fair deal. Work within them, and you'll build your company on a foundation that holds up when it matters most.

References

Primary Treatise

Thomas Lee Hazen, *Treatise on the Law of Securities Regulation* (Nov. 2025 Update):

- § 1:48–1:80 (Definition of “security”)
- § 4:2 (Overview of exemptions from registration)
- § 4:25 (Intrastate exemptions, Rules 147 and 147A)
- § 4:44 (Regulation A / A+)
- § 4:52 (Regulation Crowdfunding)
- § 4:62 (Regulation D overview)
- § 4:66 (Accredited investor definition)
- § 4:79 (Form D filing requirements)
- § 4:82 (Rule 504)
- § 4:92 (Rule 506)
- § 4:116 (Regulation S)

Federal Statutes

Securities Act of 1933, 15 U.S.C. §§ 77a *et seq.*

Securities Exchange Act of 1934, 15 U.S.C. §§ 78a *et seq.*

Jumpstart Our Business Startups (JOBS) Act, Pub. L. No. 112-106 (2012)

National Securities Markets Improvement Act (NSMIA), Pub. L. No. 104-290 (1996)

Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (2010)

SEC Rules

17 C.F.R. §§ 230.147, 230.147A (Intrastate exemptions)

17 C.F.R. §§ 230.251–263 (Regulation A)

17 C.F.R. §§ 230.500–508 (Regulation D)

17 C.F.R. §§ 230.901–905 (Regulation S)

17 C.F.R. §§ 227.100 *et seq.* (Regulation Crowdfunding)

17 C.F.R. § 230.148 (Demo day exception)

17 C.F.R. § 230.152 (Integration framework)

17 C.F.R. § 230.241 (Testing the waters)

SEC Releases and Guidance

Facilitating Capital Formation and Expanding Investment Opportunities, Sec. Act Rel. No. 33-10884 (Nov. 2, 2020)

Amending the “Accredited Investor” Definition, Sec. Act Rel. No. 33-10824 (Aug. 26, 2020)

Inflation Adjustments Under the JOBS Act, Sec. Act Rel. No. 33-11098 (Sept. 9, 2022)

Latham & Watkins LLP, SEC Division of Corporation Finance No-Action Letter (March 12, 2025)

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Gibson Dunn, “Securities Enforcement 2024 Year-End Update” (Jan. 2025)

Morgan Lewis, “New SEC Guidance Eases Burden in Rule 506(c)” (Mar. 2025)

Ropes & Gray, “SEC Issues No-Action Letter Clarifying Rule 506(c)” (Mar. 2025)

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