

## RAISING CAPITAL WITH REGULATION D

June 2025

### Executive Summary

As described in our “Raising Capital through Private Placements: Deal Points (available, with other resources, at [Kurtin PLLC Raising Capital](#)), any attempt to raise capital by the offer and sale of debt or equity securities by any business enterprise or investment fund in the U.S. market must be made with a publicly filed registration statement pursuant to the U.S. Securities Act of 1933 (the “Securities Act”), which governs the initial issuance of securities, unless an exemption from registration is available. Exemptions from the registration requirement are valuable because the registration process, especially for an initial public offering, or “IPO,” is costly, rigorous, and leads to extensive ongoing compliance obligations under the Securities Exchange Act of 1934 (the “Exchange Act”), which regulates both offers and sales of securities after their initial issuance and the reporting obligations of public companies.

By far the most popular exemption from the registration requirement for any business enterprise or investment fund (an “Issuer”) is Regulation D and its Rule 506, regulations adopted by the Securities and Exchange Commission (“SEC”), the U.S. securities regulator. This advisory takes a deep dive into how to raise capital using Reg. D, Rule 506 and the advantages and disadvantages of its two subsections, Rule 506(b), which restricts public solicitation by Issuers of investors, and Rule 506(c), which permits public solicitation.

### I. Regulation D, Rule 506 Attributes, Advantages and Disadvantages

#### a. Aggregate Offering Limitation.

Rule 506 has no aggregate offering limitation; if the other requirements of the Rule are met, an unlimited dollar amount of securities may be offered in a single Rule 506 offering. The unlimited aggregate offering amount is a material and nearly unique advantage of Rule 506 compared to other Securities Act exemptions from registration. The unlimited aggregate offering amount and the lack of ongoing reporting obligations account for the popularity and frequent use of Rule 506 compared to the other exemptions (see Section II of this advisory on SEC metrics on popularity and use of the various Securities Act exemptions). Rule 506 has two important subsections, Rule 506(b), the “traditional” rule, which prohibits general solicitation of investors, subject to some new limited exceptions; and Rule 506(c), a relatively new rule that permits general solicitation under more stringent conditions. The differences are discussed in the Special Topics boxes below.

b. Issuer and Investor Requirements and Qualifications.

*Issuers*

There are no qualifications on the kind of business enterprise or investment fund Issuer that may issue securities under Rule 506, although an Issuer may be disqualified under “bad actor” provisions. Issuers may be U.S. or non-U.S. (“foreign”) private or public (“Exchange Act reporting” companies. Many of the other Securities Act exemptions are not available to foreign issuers, Exchange Act reporting (public) companies, certain investment funds and “blank check” companies, defined by Securities Act Rule 419 as companies formed without a specific business purpose or with a business plan to go public in an IPO and then merge with or acquire an operating company, such as “SPACs,” or “Special Purpose Acquisition Companies.” Any of those entities, as well as more typical early-stage private company or fund Issuers, may use Rule 506, which accounts for the nearly universal use of Rule 506 in Mergers & Acquisitions, or “M&A”; “PIPE,” or “Private Investment in Public Equity,” transactions; financings of Exchange Act reporting companies; SPACs during or after their IPOs; and digital coin/cryptocurrency offerings.

*Investors*

*Accredited Investors*

The distinction between potential and actual purchasers of securities who are “Accredited Investors” and those who are not is central to the Securities Act registration exemption scheme. The focus of the securities laws and the SEC regulatory regime is investor protection, mainly achieved by ensuring adequate disclosure by the Issuer to prospective purchasers to allow them to make an informed decision about whether to invest. For Securities Act public offering registration statements, the disclosure requirements, both of financial and accounting information and of qualitative, or unquantifiable, information are extensive. However, “Accredited Investors,” defined in the Securities Act and Reg. D to include institutions such as banks and insurance companies; registered broker-dealers, investment advisors and investment companies; certain companies, trusts, and family offices; and persons who, by reason of their income, net worth, financial sophistication or certifications, or “insider” status such as director or officer of the Issuer company, are deemed not to need the benefit of the Securities Act’s full disclosure scheme. The net worth and net income requirements are relatively modest for any individual investor who is likely to be a potential private placement investor: at least \$1 million

in net worth (excluding primary residence) or net income of more than \$200,000 in each of the two most recent years (or \$300,000 including spousal/spousal equivalent income).

***Reg. D, Rule 506(b) v. 506(c)***

***Rule 506(b):*** there may be unlimited Accredited Investors and up to, but no more than, 35 “sophisticated” but non-accredited investors (in fact or in Issuer’s “reasonable belief”) in any 90-calendar-day period (but see Section I(h) below on why as a general rule not to sell to any non-accredited investors). Investors may “self-certify” their Accredited Investor status with subscription documents, questionnaires or stock purchase agreements, a relatively small due diligence burden for Issuers and a significant time and cost advantage over Rule 506(c).

***Rule 506(c):*** all purchasers must be Accredited Investors, and Issuer must also take Rule-specified “reasonable steps” to confirm their Accredited Investor status, a heavier burden on Issuer not required under Rule 506(b)’s “self-certification” regime. The Rule 506(c) reasonable steps can include detailed investor financial and tax disclosures and their review by Issuer.

c. Limitations on Manner of Offering.

***Reg. D, Rule 506(b) v. 506(c)***

***Rule 506(b):*** no general solicitation or advertising to the public at large is permitted. Rule 148 permits Issuers to engage in “Test-the-Waters” and “Demo Day” (organized pitch presentations by one or a series of Issuers under the auspices or sponsorship of a university, investment bank or fund, accelerators, incubators and other parties) communications with generic solicitation-of-interest materials for a prospective exempt sale of securities prior to determining which exemption it will use without violating the no “general solicitation”/“general advertising” prohibitions of Rule 506(b) if that exemption (by far the most popular) is eventually chosen, provided, among other things, that the “Demo Day” sponsor made no investment recommendations at the event, received no payments like a brokerage commission, nor charged a fee to attend it.

**Rule 506(c):** general solicitation and advertising under Rule 506(c) *is* permitted as long as *all* eventual actual purchasers are Accredited Investors. In practice, under Rule 506(b), a pre-existing relationship or connection with the prospective investors is necessary, and no general media outreach is permitted. Under Rule 506(c), no pre-existing relationship with the investors is needed, and general media outreach is permitted, as long as the actual eventual purchasers are Accredited Investors, which explains Rule 506(c)'s more stringent and Rule-specified requirement for the Issuer to take affirmative "reasonable steps" to confirm "Accredited Investor" status, compared to Rule 506(b)'s Accredited Investor "self-certification."

d. SEC and State Filing Requirements.

SEC. The Issuer must file SEC Form D online within 15 days of first sale pursuant to Regulation D, Rule 503. However, the filing is not a condition of receiving the exemption. There is no ongoing reporting requirement. State. Rule 506 securities are exempt from state filing "Blue Sky" requirements as "Covered Securities" under Securities Act section 18 (Note: Broker-Dealers and others who aid in placing the securities may also have Financial Industry Regulatory Authority ("FINRA") filing obligations).

e. Limitations on Resales.

***Resales of Restricted Securities***

Since resales of Issuer's securities do not directly raise capital for it, discussion of resale of the Issuer's securities by their original purchaser is not specifically germane to this advisory. Nevertheless, the ability to resell those securities will obviously affect the investment market for the Issuer's original issuance of them; all purchasers prefer liquidity, and therefore the ability to resell the securities they've purchased. For that reason, a brief overview of resale restrictions is relevant here.

Securities sold under many of the Securities Act exemptions, including Regulation D, are "Restricted Securities" as defined in Securities Act Rule 144, meaning securities acquired from the issuer or its affiliate in a transaction or chain of transactions not involving a public offering. Restricted Securities cannot be resold unless they are subsequently registered or unless another

exemption from registration is available for their resale. Most such resale exemptions are found under Rule 144, which relies on the Securities Act's exemption from registration of securities sold "by a person other than an issuer, underwriter, or dealer." The term "underwriter," defined in Securities Act section 2(a)(11), means someone who purchased the securities with the intention to distribute them to others, like a traditional investment bank underwriter. A person who is not an underwriter can therefore resell Restricted Securities without registering them, and Rule 144 provides a safe harbor for doing so.

As a general matter, Rule 144(d) provides that Restricted Securities issued by a company that is not a "reporting company" under the Exchange Act cannot be resold by the holder until at least one year from their issuance to him or her has passed, called the "holding period" (or six months in the case of reporting company Issuers).

Rule 144A provides that another exemption for resale of Restricted Securities is available to "Qualified Institutional Buyers," or "QIBs." QIBs are deemed, much like Accredited Investors in the case of original issuance of securities, sufficiently sophisticated as not to need the protections provided by the disclosures required in the registration process upon their purchase by resale of those securities. QIBs include insurance companies, investment companies and small business investment companies, investment advisers, employee benefit plans, trust funds, securities dealers registered under Exchange Act section 15, banks and others. QIBs generally must own and invest on a discretionary basis an aggregate at least \$100 million in the securities of Issuers unaffiliated with them (or, in the case of registered securities dealers, at least \$10 million, or be acting in a "riskless principal transaction" on behalf of a QIB). For banks, there is an additional \$25 million audited net worth requirement for QIB status. Obviously, QIB qualification is a far higher threshold than Accredited Investor qualification but provides an avenue for resale of Restricted Securities when the holding period cannot be waited for to expire.

Rule 145 provides another set of rules for the resale of Restricted Securities acquired in the course of business combinations such as mergers and acquisitions, and for which Reg. D is often used as a resale exemption.

Finally, in this abbreviated discussion of resale of restricted securities, the 2015 FAST Act enacted an amendment to the Securities Act, section 4(a)(7), which provides an exemption for private resales of Restricted Securities. Section 4(a)(7) provides a safe harbor for the so-called Securities Act section 4(a)(1½) exemption, private resales by persons other than the Issuer. It

is generally used for resales to Accredited Investors who are not QIBs. Because section 4(a)(7) requires Issuer information and therefore cooperation, and because the resale purchaser receives Restricted Securities (unlike purchasers who purchase Restricted Securities after the Rule 144 holding period expires), the utility of section 4(a)(7) has been limited.

f. Information Requirements.

There are no specific information requirements if only Accredited Investors are sold to; *however*, if any – *even one* – of the permitted up-to-35 non-accredited investors is sold to under Rule 506(b), an information disclosure document – an offering circular or private placement memorandum (“PPM”) – must be furnished to the non-accredited investor(s) containing quantitative financial and non-quantitative information as provided for Regulation D, Rule 502 and Form 1-A.

The antifraud provisions of the securities laws and regulations also apply, notably Securities Act section 17 and Exchange Act Rule 10(b) and Rule 10(b)(5). As discussed below, use of a PPM or offering circular is a good practice in most cases as both an “insurance policy” and as a “prospectus” for prospective investors, but if any non-accredited investors are sold to, the requirements for the PPM under Reg. D are mandatory and stringent, whereas they are relaxed if only Accredited Investors are sold to, meaning the antifraud provisions, which always apply, are the principal legal/regulatory concern.

***Why Use a Private Placement Memorandum: Best Insurance Policy and Best Prospectus***

Some of the private placement/exempt from public registration methods to raise capital in the U.S. securities market require only very limited financial and other information to be disclosed to prospective investors, tempting the securities issuing company to dispense with a PPM or offering circular. That’s especially the case for Accredited Investors. But even when a PPM is not strictly required by the securities regulations, it’s usually a bad and penny-wise mistake to dispense with one, *unless* selling securities only to institutional investors like private equity and venture capital firms, hedge funds and others that are not only Accredited Investors, but professional institutional investors used to doing their own due diligence and for whom a stock purchase agreement in lieu of a PPM will suffice, for two main reasons.

***Best Insurance Policy (and Best Litigation Deterrent):*** A PPM disclosing basic quantitative and qualitative information about the Issuer is the best insurance policy and not expensive compared to the protection it provides. It memorializes in a way that a PowerPoint slide deck alone cannot the financial and other disclosures made pre-sale, and can serve as the best evidentiary refutation to a disgruntled investor's later claim of securities fraud, misrepresentation or omission to state a material fact in reliance upon which the investor purchased, often allowing the Issuer to avoid litigation altogether or move to summarily dismiss the investor's complaint, avoiding being dragged into the civil discovery process and ultimately forced into a nuisance settlement.

***Best Prospectus:*** A PPM is also the best prospectus. If the Issuer has a good investment story to tell, it should tell it in a PPM; if well executed, it will encourage the prospective investors to invest. Moreover, even institutional investors, and certainly Accredited Investors, family offices, trusts, and other potential investors are used to seeing and analyzing qualitative and quantitative, including financial, information in the general PPM format, and may be disconcerted and dissuaded from investing if they are not furnished with it; they know the format and how to quickly find the information they want to see.

### ***Explanation and Takeaways***

The value of the PPM as an insurance policy has been highlighted for us at Kurtin PLLC several times. In one case, contacted by a disgruntled investor that wanted to recoup its investment, whether feeling that our Issuer client wasn't hitting its milestones quickly enough or some other cause for buyer's remorse, and the Issuer accused by investor's attorney of omission to state material facts, potentially securities fraud, we were able to quickly point to two of the PPM's statement of "risk factors," which immediately made clear to the investor's attorney that a claim of omission to state a material fact would be immediately dismissed and pointless: the complained-of risks clearly had been disclosed in the PPM. In another case, it was the PPM's business description section that made clear that no omission to state a material fact had occurred. In a third, the PPM's financial information section made clear that no fraud had occurred. But in all three cases, a well-prepared PPM made all the difference to fend off the lawsuit threat by an investor seeking a pretext to recoup its investment and avoid a nuisance lawsuit and settlement that might have ruined the company.

As for the PPM as a prospectus, of course even the best prepared one cannot guarantee a given investor will invest in a given company. But we have often seen experienced investors use the PPM to find the information they are seeking rapidly, focus on those items, and develop the indispensable sense that, of the hundred deals they looked at that week, our Issuer was one of the well-managed ones and a viable investment vehicle.

Finally, Rule 254 provides for a preliminary offering circular or PPM, a “red herring,” like those used in IPOs and other Securities Act registration statements, functioning as a written offer by Issuer to sell securities. A red herring PPM can be a valuable tool in getting in front of prospective investors before all information relating to the offering is finalized.

g. Advantages.

The advantages of Rule 506 include the unlimited dollar size of the offering (no limit on the amount of capital that may be raised); the unlimited number of Accredited Investors who may be sold to, no limitations on the type of Issuer, no ongoing reporting obligations and no specific Reg. D information requirements if selling only to Accredited Investors. Rule 506 may also be combined with other exemptions on the same private placement. Finally, Rule 506(c) allows general solicitation of investors, although the eventual actual investors must all be Accredited Investors (but see subsection (h) below for the disadvantage that general solicitation brings with it). All these advantages have combined to make Rule 506 by far the most popular Securities Act registration exemption.

h. Disadvantages.

The general solicitation permission in Rule 506(c) makes it more likely that antifraud provisions would be breached than under Rule 506(b). Under Rule 506(c), the Issuer must take “reasonable steps” that are relatively time-consuming and burdensome to verify Accredited Investor status, raising the compliance burden. Selling to any – even one - non-accredited investors activates the Reg. D requirement of specified quantitative and qualitative disclosure material, somewhat increasing the expense, risk and time required for the private placement (a PPM may be provided even to Accredited Investors, of course, and SEC notes to Reg. D recommend furnishing information to Accredited Investors even when not required and may encourage their investment (the PPM’s “prospectus” function) as well as providing an evidentiary record of full disclosure against later claims of misrepresentation or omission to disclose material facts (the PPM’s

“insurance policy” function). For these reasons, we encourage the use of PPM’s in all cases except (usually) when the Accredited Investors are venture capital, private equity, family office or other institutional investment professionals, which generally do their own due diligence and which are usually accustomed to make investment decisions without a PPM. In sum, if the sought-for capital can be raised through only Accredited Investors without general solicitation, using Rule 506(b) instead of Rule 506(c), reduces the compliance burden and lowers the risks.

### ***Integration***

“Integration” is an SEC concept that seeks to avoid Issuers evading the aggregate offering limits of some of the Securities Act registration exemptions this advisory covers by providing that securities issuances pursuant to those exemptions are or are not “integrated” with recent prior offerings, meaning the prior offerings do or do not count against the aggregate offering price limitation for the current offering. Integration does not matter for Rule 506, because there is no aggregate offering limitation for prior offerings to count against. However, for other exemptions that do have aggregate offering limitations, the integration rules must be kept in mind, because if the exemption becomes unavailable because of integration rules violation, the offering might be subject to registration, the whole point of the exemption scheme to avoid. In 2020, the SEC adopted a new, simplified, liberalized and harmonized integration framework in recognition that as Securities Act registration exemptions have increased, the integration rules had become more complex, disjointed and unwieldy. The new integration framework is set forth in a new Rule 152, replacing former Rules 152 and 155 for integration of non-public and public offerings.

Amended Rule 152(a) establishes a unified, facts-and-circumstances-based analysis to determine whether an issuer can establish that an offering and the prior offerings fit into an exemption or require Securities Act registration. Amended Rule 152(b) also eliminates a prior, difficult-to-apply-and-rely-upon “five-factor” test and establishes four non-exclusive safe harbors from integration, meaning that if they are complied with, the prior offering will *not* count against the aggregate offering limit, if any, of the current offering:

- Any offering made more than 30 calendar days before the commencement of another offering, or more than 30 calendar days after completion or termination of any other offering, will not be integrated with the other offering, provided that for an exempt

offering for which general solicitation is not permitted, the purchasers were not solicited though general solicitation or established a substantive relationship with the issuer prior to the commencement of the offering for which general solicitation is not permitted. This safe harbor replaces a previous generally, but not universally, applicable six-month safe harbor. Former Rule 155 is eliminated, replaced by new Rule 152(b)(1).

- Rule 701 (employee benefit/stock option and other equity compensation) and Regulation S offerings (offshore offerings not directed to the U.S. market) will not be integrated with Reg. D offerings per new Rule 152(b)(2).
- A Securities Act registered offering will not be integrated with another offering if made subsequent to (i) a terminated or completed offering for which general solicitation was not permitted; or (ii) a terminated or completed offering for which general solicitation was permitted but which was made only to QIBs or “Institutional Accredited Investors” (“IAI’s”); or (iii) an offering that was terminated or completed more than 30 calendar days prior to the commencement of the registered offering, per new Rule 152(b)(3).
- Offers and sales made in reliance on an exemption for which general solicitation is permitted such as Rule 506(c) will not be integrated with another offering if made subsequent to any prior terminated or completed offering, per new Rule 152(b)(4).

## II. FY 2024 SEC Exemption Utilization Data Metrics (compared to FY 2023)

The SEC has compiled valuable statistics on registered and exempt-from-registration securities offerings for FY 2024, ending June 30, 2024, as reported in the FY 2024 Annual Report of the SEC Office of the Advocate for Small Business Capital Formation. According to the Annual Report (available at <https://www.sec.gov/files/2024-oasb-annual-report.pdf>), highlights include:

### *Exempt from Registration Private Placements and Securities Offerings*

- **Regulation D, Rule 506(b) (called “Private Placements” in the Report’s nomenclature)** was used to raise \$1.87 trillion, including \$1.7 trillion by pooled investment funds and another \$170 billion by non-fund businesses (this is the first time that the Small Business Capital Formation report

has separately broken out capital raised by pooled investment funds and other types of businesses. Use of Rule 506(b) was led by the pooled investment funds sector, followed by the tech, real estate and healthcare sectors. New pooled investment fund formation of all kinds (venture capital, private equity, hedge, etc.) was increasingly dominated by family offices and high net worth individuals.

- **Regulation D, Rule 506(c) (General Solicitation Offerings)** was used to raise \$125 billion in capital by funds and \$12 billion by other types of businesses, a total of \$147 billion, a significant drop from FY 2023's \$169 billion, which had been up from \$148 billion in FY 2022, with a median offering amount of \$750,000.
- **Regulation A/A+ (mini-IPOs)**, a quasi-public offering not requiring Securities Act section 5 registration, was used to raise \$1.2 billion by non-fund businesses and essentially not used by funds, down from \$1.5 billion in FY 2023 and \$1.8 billion in FY 2022's \$1.8 billion. Use of Reg. A was led by the real estate sector, followed by the financial services/Fintech, manufacturing and tech sectors.
- **Regulation D, Rule 504** was used to raise \$246 million by non-fund businesses and essentially not used by funds, a moderate decline from FY 2003's \$258 million, which was a marked and significant decline from FY 2022's \$624 million (however, in FY 2021 \$313 million was raised, meaning that 2022 saw a 2x increase from 2021, which then decreased in 2023 by over 2x, raising the question of whether emergence from the Covid 19 pandemic contributed to the 2022 surge in Rule 504 usage).
- **Regulation CF (Crowdfunding)** was used to raise \$249 million by non-fund businesses and essentially not used by funds, down from FY 2023's \$352 million, little changed from FY 2022's \$368 million, with a median offering amount of \$106,000.
- **Other Exempt Offering Methods (Regulation S and Rule 144A)** were used to raise \$949 billion by non-fund businesses and \$99 billion by funds, a total of over \$1.0 trillion, down from FY 2023's \$1.3 trillion and sharply down from FY 2022's 2.0 trillion (but FY 2021 had been \$1.3 trillion, another indication that 2022 may have been a pandemic emergence-influenced surge).

### *Registered Securities Offerings*

- **IPOs, including SPACs**, were used by non-fund businesses to raise \$28 billion and by funds to raise \$4 billion, a total of \$32 billion, up from FY 2023's \$17 billion, which had crashed from FY

2022's \$126 billion, which itself was less than half of FY 2021's \$317 billion, with a median offering amount of \$17 million.

- **Other Registered Offerings (Secondary and Debt Offerings)** were used to raise \$1.2 trillion by non-fund businesses and \$4 billion by funds.

### *Takeaways*

First, exempt, non-registered placements and offerings continue to dominate the U.S. capital markets. Reg. D, Rule 506(b) alone was used to raise over 50 times the amount raised in IPOs, and the total of \$3.2 trillion raised in exempt offerings was over 250 times the amount raised in IPOs, including SPACs, as well as being the equivalent of nearly 10% of U.S. GDP. Put another way, IPOs, including SPACs, accounted for less than 1% of new capital formation, while exempt offerings accounted for over 99%. IPOs and SPACs get a lot of press, but the level of IPO/SPAC capital formation is dwarfed by that of Rule 506(b) and the exempt-from-registration capital markets generally. The U.S. IPO market, now a fraction of the size of the private capital markets in both deal volume and size, has become almost exclusively the territory of large, mature companies, which account for over two-thirds of the approximately 4,500 public listed company registrants.

Second, is the continued dominance of Reg. D, Rule 506(b) among exemptions. The SEC has worked hard to amend other exemptions to make them more useful, available and less complicated and expensive. Nevertheless, Rule 506(b) continues to dominate. The unlimited aggregate offering amount of Rule 506(b), easing of financial information required by Reg. Dule 502, lower transaction costs compared to Reg. A, availability to both U.S. and foreign Issuers, limited general solicitation permitted by Rule 148 and increasing liberalization of resale availability for Reg. D securities can be assumed to be responsible for Rule 506(b)'s continuing and even increasing popularity, while several other exemptions, such as Reg. D, Rule 504 have languished and even declined.

Owen D. Kurtin

**Appendix 1**  
**Regulation D, Rule 506 Exemption Summary Chart**

Type of Offering	Aggregate Offering Limitation	Issuer & Investor Requirements	Limitations on Manner of Offering	SEC and State Filing Requirements	Limitations on Resales	Information Requirements
Regulation D Rule 506	None.	<p>Rule 506(b): unlimited Accredited Investors and up to 35 non-accredited investors permitted.</p> <p>Rule 506(c): all purchasers must be Accredited Investors.</p>	<p>Rule 506(b): No general solicitation or advertising permitted; Rule 148 “Test-the-Waters” and “Demo Day” activity permitted.</p> <p>Rule 506(c): General solicitation and advertising permitted if all purchasers are Accredited Investors.</p>	<p>SEC: File Form D not later than 15 days after first sale. No ongoing reporting.</p> <p>State: Exempt as “Covered Securities” pursuant to Securities Act s. 18.</p>	Restricted Securities that can only be sold if registered or with a resale exemption.	No information requirements for only Accredited Investors; if any non-accredited investors are sold to under Rule 506(b), must furnish a PPM per Rule 502 and Form 1-A.

***About Us***

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