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Private Placements: How Companies Raise Money

When companies need to raise money without going through a full SEC registration, they often turn to private placements. The starting point is Section 5 of the Securities Act, which says every offer and sale of securities must be registered unless an exemption applies—a process that can be costly, time-consuming, and dependent on public market appetite. Private placement exemptions exist to make capital formation faster and more practical. The two most commonly used are Section 4(a)(2) and Regulation D (particularly Rule 506). Securities sold this way are "restricted," meaning they come with resale limits.

Section 4(a)(2) is the basic statutory exemption for an issuer's transaction "not involving a public offering." It's transactional: it exempts the specific sale, not the securities forever, and it isn't available to affiliates or control persons reselling the issuer's shares. Think of it as a facts-and-circumstances pathway that focuses on how many people you approach, what you tell them, how sophisticated they are, and whether the manner of the offering looks "private" rather than broadly advertised. Resales must be separately registered or independently exempt.

Regulation D converts the open-ended concept into clearer checklists. Rule 506(b) lets issuers raise an unlimited amount of money without using general solicitation or general advertising, and it permits up to 35 non-accredited purchasers, so long as those individuals are actually sophisticated (alone or with a purchaser representative) and able to evaluate the risks and merits. In practice, most issuers exclude non-accredited purchasers in 506(b) rounds because the compliance burden and uncertainty around what must be delivered to them (near-prospectus-level disclosures, financials, and suitability paperwork) are high, and the practical risks (e.g., closing delays, disputes, or rescission claims) go up. Rule 506(c), introduced by the JOBS Act, flips the script on publicity to some degree: you may market broadly and use general solicitation, but every purchaser must be accredited and the issuer must take "reasonable steps" to verify that status. Rule 504 offers another exemption for smaller offerings but still generally disallows public advertising.

"Accredited investor" is a defined term with multiple routes to qualify. Institutions such as banks, registered broker-dealers, registered (and certain exempt) investment advisers, investment companies, BDCs, insurance companies, and entities with more than $5 million in total assets all make the list, as do the issuer's directors and executive officers. Individuals can qualify by net worth (over $1 million excluding the value of a primary residence, with specific rules for mortgage debt and joint calculations) or by income (over $200,000 individually or $300,000 with a spouse for each of the last two years with an expectation of the same this year).

In 2020, the SEC added several new ways to qualify: individuals with specified professional certifications, “knowledgeable employees” of private funds investing in those funds, family offices meeting defined conditions, and their family clients.

If you choose the 506(c) “public marketing” route, verification is not a check-the-box form; it’s a principles-based requirement that depends on who the purchaser is, what information you already have about them, and how you’re soliciting. Mass email or open-web ads usually call for more rigorous steps; merely asking investors to self-certify isn’t enough. The SEC has identified non-exclusive safe-harbor methods—reviewing tax forms for income, reviewing bank/brokerage statements and liabilities for net worth (along with written representations), obtaining third-party letters from certain professionals, or relying on a recent verification for a returning investor when you have no contrary information. The SEC even maintains a portal for submitting Rule 506(c) solicitation materials.

No matter which path you pick, remember that private-placement securities are restricted. Investors typically cannot flip them freely; they’ll need a registration or an exemption (like Rule 144) to resell. Issuers should set expectations around transfer restrictions early to avoid unpleasant surprises later.

There are filing and timing details to get right, too. For Regulation D offerings, issuers file Form D with the SEC within 15 days after the first sale. The filing itself doesn’t make or break the exemption, but failing to file can lead to the SEC barring you from future use of Regulation D, and some states treat a Form D as a prerequisite to their notice-filing regimes. Expect to disclose who you’re paying to place the securities and how much, along with headcounts of accredited and non-accredited purchasers. State “blue sky” notices often ride along with Rule 506 because federal law preempts most substantive state review but still allows states to require a notice and fee; plan for that as part of your closing checklist.

If you’re sequencing offerings, the “integration” rules prevent you from slicing one capital raise into multiple tranches to dodge the registration requirements. Under Rule 152, transactions that are part of a plan to evade registration can be integrated and judged together. The rule also provides practical safe harbors: for example, if offerings are more than 30 calendar days apart, they won’t be integrated, with extra guardrails when an offering that forbids general solicitation follows one that allowed it. Other safe harbors cover employee-plan/Reg S offerings, certain sequences involving a later registered offering, and later exempt offerings that permit general solicitation. If you run a generic “test-the-waters” campaign and then pivot to a 506(b) raise within 30 days, be prepared to share those generic solicitation materials with any non-accredited purchasers.

Finally, if a FINRA-member broker-dealer helps place your securities, there's a separate notice filing: Rule 5123 generally requires the member to file the PPM, term sheet, or other offering document within 15 calendar days of the first sale (or a notice if no document was used). The rule exempts many common transactions and purchaser types, but it still captures certain Regulation D deals. Treat this as the broker-dealer's obligation, but coordinate early because multiple firms in the same deal may have different filing duties.

The bottom line: private placements are powerful, but they are not casual. Choose the right exemption, confirm who your buyers are (and how you'll verify them), control your marketing, respect resale limits, calendar your Form D and blue-sky notices, and plan around integration. With a tight process, you can raise capital efficiently while staying squarely within the rules.

For help choosing the right exemption (Section 4(a)(2) vs. Regulation D), structuring a 506(b) or 506(c) raise, preparing compliant disclosures, verifying accreditation, and handling Form D and state blue-sky filings, call or email:

Geoff Long 713.800.3616
Geoff.Long@dtlawyers.com

Robert Cherry 713.275.1370
Robert.Cherry@dtlawyers.com