

## What is an accredited investor?

Certain securities offerings that are exempt from registration may only be offered to, or purchased by, persons who are “accredited investors.” An “[accredited investor](#)” is:

- a bank, savings and loan association, insurance company, registered investment company, business development company, or small business investment company or rural business investment company
- an SEC-registered broker-dealer, SEC- or state-registered investment adviser, or exempt reporting adviser
- a plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5 million
- 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 tax exempt charitable organization, corporation, limited liability corporation, or partnership with assets in excess of \$5 million
- a director, executive officer, or general partner of the company selling the securities, or any director, executive officer, or general partner of a general partner of that company
- an enterprise in which all the equity owners are accredited investors
- an individual with a net worth or joint net worth with a spouse or spousal equivalent of at least \$1 million, not including the value of his or her primary residence
- an individual with income exceeding \$200,000 in each of the two most recent calendar 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 or
- a trust with assets exceeding \$5 million, not formed only to acquire the securities offered, and whose purchases are directed by a person who meets the legal standard of having sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of the prospective investment
- an entity of a type not otherwise qualifying as accredited that own investments in excess of \$5 million
- an individual holding in good standing any of the general securities representative license (Series 7), the investment adviser representative license (Series 65), or the private securities offerings representative license (Series 82)
- a knowledgeable employee, as defined in rule 3c-5(a)(4) under the Investment Company Act, of the issuer of securities where that issuer is a 3(c)(1) or 3(c)(7) private fund or
- a family office and its family clients if the family office has assets under management in excess of \$5 million and whose prospective investments are directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective investment

### Additional Information

- [Press Release: SEC Modernizes the Accredited Investor Definition](#)
- [Compliance Guide: Amendments to the Accredited Investor Definition](#)

- [Compliance Guide: "Accredited Investor" Net Worth Standard](#)
- [Investor Bulletin: Accredited Investors](#)
- [Press Release: SEC Issues Staff Report on Accredited Investor Definition](#)
- [Staff Guidance: Regulation D Compliance and Disclosure Interpretations \(Section 254\)](#)

## Do state law requirements apply?

While the SEC regulates and enforces the federal securities laws, each state has its own securities regulator who enforces what are known as “blue sky” laws. If a company is selling securities, it must comply with both federal regulations and state securities laws and regulations in the states where securities are offered and sold (typically, the states where offerees and investors are based).

Under the Securities Act, if a company’s offering qualifies for certain exemptions from registration, that offering is not required to be registered or qualified by state securities regulators. Even if the offering is made under one of those exemptions, the states still have authority to investigate and bring enforcement actions for fraud, impose state notice filing requirements, and collect state fees. The failure to file, or pay filing fees regarding, any such materials may cause state securities regulators to suspend the offer or sale of securities within their jurisdiction. Companies should contact state securities regulators in the states in which they intend to offer or sell securities for further guidance on compliance with state law requirements. The following table illustrates which offerings are potentially subject to state registration or qualification under the Securities Act.

| Securities Act Exemption | Under the Securities Act, is the offering potentially subject to state registration or qualification? |
|--------------------------|---|
| Section 4(a)(2)          | Yes   |
| Rule 506(b)              | No  |
| Rule 506(c)              | No  |
| Rule 504                 | Yes   |
| Regulation Crowdfunding  | No  |
| Regulation A - Tier 1    | Yes   |
| Regulation A - Tier 2    | No  |
| Rules 147 and 147A       | Yes   |
| Rule 701                 | Yes   |

For the offerings that are potentially subject to state registration or qualification, each state’s securities laws have their own separate registration requirements and exemptions to registration requirements. Even if the offering is not subject to state registration or qualification, there may still be state notice filing requirements and fees.

To locate a state securities regulator and learn more about a particular state’s securities laws, please visit the [North American Securities Administrators Association \(NASAA\)](#) website. [Additional Information](#)

- [Fast Answers: State Securities Regulators](#)

## **What are restricted securities?**

“Restricted securities” are previously-issued securities held by security holders that are not freely tradable. Securities Act [Rule 144\(a\)\(3\)](#) identifies what offerings produce restricted securities. After such a transaction, the security holders can only resell the securities into the market by using an effective registration statement under the Securities Act or a valid exemption from registration for the resale, such as Rule 144.

Rule 144 is a "safe harbor" under Section 4(a)(1) providing objective standards that a security holder can rely on to meet the requirements of that exemption. Rule 144 permits the resale of restricted securities if a number of conditions are met, including holding the securities for six months or one year, depending on whether the issuer has been filing reports under the Exchange Act. Rule 144 may limit the amount of securities that can be sold at one time and may restrict the manner of sale, depending on whether the security holder is an affiliate. An affiliate of a company is a person that, directly, or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the company.

## **How can an investor resell non-restricted securities?**

An investor that is not affiliated with the issuer and wishes to sell securities that are not restricted must either register the transaction or have an exemption for the transaction. An exemption commonly relied upon for the resale of the securities is Section 4(a)(1) of the Securities Act which is available to any person other than an issuer, underwriter or dealer. Please be aware that several exemptions, including the exemptions under Regulation D, are only available for offers and sales by an issuer of securities to initial purchasers and are not available to any affiliate of the issuer or to any person for resales of the securities.

### **Additional Information**

- [Compliance Guide: Revisions to Rules 144 and 145](#)
- [Investor Publications: Rule 144: Selling Restricted and Control Securities](#)
- [Staff Guidance: Rule 144 Compliance and Disclosure Interpretations \(Section 128\)](#)

## **What is the process for requesting a waiver of “bad actor” disqualification?**

The Office of Enforcement Liaison in the Division of Corporation Finance handles applications for waivers from the disqualifications imposed by Rule 262 of Regulation A, Rule 504(b)(3) of Regulation D, Rule 506(d) of Regulation D and Rule 503 of Regulation Crowdfunding.

### **Disqualification Provisions**

The disqualification provisions provide that the Regulation A, Regulation D, and Regulation Crowdfunding exemptions from registration are not available for an offering if, among other things, the issuer or other “covered persons” have experienced a disqualifying event, such as being convicted of or subject to court or administrative sanctions for

certain securities fraud or other violations of specified laws. The substance of each of these requirements is consistent across the rules.

For a discussion of the covered persons and disqualifying events, please see the Small Business Compliance Guides for [Regulation A](#), [Rule 504](#) and [Rule 506](#) of Regulation D and [Regulation Crowdfunding](#).

Under Regulation D and Regulation Crowdfunding, disqualification will not arise as a result of disqualifying events relating to any conviction, order, judgment, decree, suspension, expulsion or bar that occurred before the effective date of the rule or “bad actor” amendment. Matters that existed before the effective date of the rule or “bad actor” amendment, are still within the relevant look-back period, and would otherwise be disqualifying are, however, required to be disclosed. The table below provides the effective dates for each of these rules.

| Rule or Regulation       | Effective Date of the Rule or “Bad Actor” Amendment |
|--------------------------|---|
| Rule 504 of Regulation D | January 20, 2017                                    |
| Rule 506 of Regulation D | September 23, 2013                                  |
| Regulation Crowdfunding  | May 16, 2016  |

For offerings under Regulation A, please see the [Small Business Compliance Guide](#) to determine whether or not an event is considered to be a disqualifying event.

## Waivers

The Commission may waive Regulation A, Regulation D and Regulation Crowdfunding disqualifications upon a showing of good cause that the disqualification is not necessary under the circumstances. The Commission has delegated authority to grant waivers of this kind to the Director of its Division of Corporation Finance, and the authority has been subdelegated to certain officials of the Division. The Commission itself retains authority to grant these waivers.

Granted waivers are made publicly available at the Division of Corporation Finance’s website page on [No-Action letters](#). The Division of Corporation Finance issued a [policy statement](#) describing the factors it considered in waiver requests. In [Release No. 33-9414](#) (July 10, 2013), the Commission also identified a number of circumstances (such as change of control, change of supervisory personnel, absence of notice and opportunity for hearing, and relief from a permanent bar for a person who does not intend to apply to reassociate with a regulated entity) that could be relevant to an evaluation of a Rule 506 waiver request.

## Submitting Your Waiver Request

### Specify Grounds for Granting Waiver

The text of your waiver request should discuss the background of the matter, including the facts and legal issues involved, and your suggested grounds for granting the waiver. To meet the governing legal standard, you should show good cause that disqualification is not necessary under the circumstances.

### **Draft Requests**

The Division of Corporation Finance will not grant waivers before a disqualifying event has occurred, such as before a disqualifying injunction or administrative order has been issued. If you wish to receive Commission staff feedback on your application before a disqualifying event has occurred, you may submit it in advance in draft form. For example, if you are negotiating a settlement of a Commission enforcement action and want your waiver to be effective at the same time as the injunction or administrative order settling the matter is issued, you should contact Commission staff as soon as practicable beforehand to discuss your timing requirements, and submit the application in draft form.

Your contact point should be the Office of Enforcement Liaison at (202) 551-3420.

### **Final Requests**

Your final application must be manually signed and submitted before your waiver will be granted. All waiver requests should be made to the attention of the Office of Enforcement Liaison, Division of Corporation Finance, U.S. Securities and Exchange Commission. In the context of settlement of an enforcement action, you may submit a dated manually signed application on the day your injunction or order is issued.

## **Requesting Confidential Treatment of Your Request**

If you wish to seek confidential treatment of information contained in your waiver submission (such as information relating to an ongoing investigation), you should request confidential treatment in accordance with the Commission's confidential treatment procedures in [17 C.F.R. § 200.83](#). These types of applications should be submitted under cover of another letter explaining the circumstances of the request.

### **Additional Information**

- [Division of Corporation Finance Policy Statement: Statement on Waivers of Disqualification under Regulation A and Rules 505 and 506 of Regulation D](#)
- [Compliance Guide: Disqualification of Felons and Other "Bad Actors" from Rule 506 Offerings and Related Disclosure Requirements](#)
- [Compliance Guide: Rule 504](#)
- [Compliance Guide: Regulation Crowdfunding Issuer Guide](#)
- [Compliance Guide: Regulation A](#)
- [Staff Guidance: Regulation D Compliance and Disclosure Interpretations \(Section 260\)](#)
- [Compliance Guide: Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets](#)