

Interesting Facts About U.S. Private Placements

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This week the SEC Division of Economic and Risk Analysis published a new report including a wealth of data regarding recent trends in public offerings and private placements of securities. The report includes a number of interesting facts about U.S. private placement practice, including:

- In the last few years, issuers have raised 2-3 times more capital through Regulation D than through Rule 144A.
- Rule 506(b) remains the most popular way to raise capital under Regulation D, with 97% of all funds raised under Rule 506 being raised under Rule 506(b), rather than the newer Rule 506(c), with issuers choosing not to take the additional steps required by Rule 506(c) to generally solicit investors.
- Only 6% of Rule 506(b) offerings in the most recent years have contemplated sales to non-accredited investors.
- Brokers are more likely to be used in Rule 506(c) generally solicited offerings, at 33% of new offerings compared with only 17% of new offerings under Rule 506(b).
- The issuer fails to file a Form D in as many as 10% of all unregistered offerings eligible for the Rule 506 exemption.
- The number of Regulation A offerings qualified by the SEC has taken off, from less than 10 per year before the “Regulation A+” amendments (which increased the maximum offering amount to \$50 million) to more than 80 in 2016; however, Regulation A still represents a small fraction of the funds raised under Regulation D or Rule 144A.

This is consistent with what we are seeing from our Canadian clients who conduct private placements in the United States. Most issuers that rely on a safe harbor are continuing to rely on Rule 506(b), limiting their offering to accredited investors with no general solicitation, or relying on Rule 144A, to allow for a quicker and more streamlined approach. However, Regulation A+ offerings are becoming more popular where the benefits warrant the extra time and expense.

The complete SEC report is available at: www.sec.gov/files/access-to-capital-and-market-liquidity-study-dera-2017.pdf.

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