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Securities Regulation of Private Funds

Privately Offered Funds, Relying on Regulation D Rule 506 Securities Exemption

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| **Law and Issue** | **Securities Fund, Hedge Fund, Real Estate Fund**  **Legal Requirements, Exemptions & Suggested Action** |
| **1933 Securities Act (Securities Registration or Exemption); Filing Requirement** | Regulation D Rule 506 Exemption from registration. File Form D with Securities & Exchange Commission online on EDGAR to claim Private Offering exemption. Offering must comply with the Rule 506 Requirements, including the prohibition on general solicitation, which forbids advertising, cold-calling, marketing on websites, seminar invitations or emails to people you don’t previously know. Unlimited accredited investors, 35 nonaccredited investors; Audited financials and full disclosure book required for investment offered to nonaccredited investors. |
| **Types of Funds Covered** | Securities Fund, Hedge Fund, Futures Fund, and Real Estate Fund: 1933 Act applies, because pooling investor money into one entity or account for investing in real estate, is deemed a fund. Securities Trading or Futures Trading Funds: 1933 Act applies because pooling investor money into one entity or trading account for investing, rather than in separate managed accounts is deemed a fund, and because fund is offering a pooled interest, which is deemed a security. |
| **Financial Statement Requirements** | *Unaudited* Opening Balance Sheet required. *Unaudited* Continuing Financials required for all investors accredited or not.  *Audited* Opening Balance Sheet Required for new fund if nonaccredited investors invest. Audited Continuing Financials if nonaccredited investors continue to invest. Audited financials and full disclosure book required for nonaccredited investors. For an offering to all accredited investors, audited financials are not required, but are currently “market” and therefore are typically provided, if not at the opening, then after the first year. |
| **Disclosure Document: Offering Memo under the Securities 33 Act (Reg D) and Rule 10b-5 under the 1934 Act.** | Offering Memo (Disclosure Document) Required, under 10b-5 (Antifraud) provisions of 1933 and 1934 Acts. Even a private fund, exempt from SEC ***registration***, is not exempt from ***disclosure.*** Therefore, fund must prepare a full Disclosure Document / Offering Memo, for investors, before they invest. Contents dictated by Reg D Rule 502. |
| **Blue Sky (State Securities Law) – State Registration of Fund** | Form D Notice Filing Required + Other Documents + Filing Fees in Each State (Filing Fees Range From $0 to $1,385, average is $200-$300 per state. Legal fees $600 per state, except NY and CT are higher. |
| **1940 Act (Investment Company Act – Registration of Exemption)** | Exemptions:   * § 3(c)(1): Limit of 99 accredited investors, or * §3(c)(7): Limit of 499 Qualified Purchasers, or * §3(b)(1) exemption for Commodity Pools   Qualified Purchaser is an Investor who owns $5 million in investments or manages $25 million in investments for itself and others. |
| **State Investment Company – Blue Sky** | None |
| **1934 Exchange Act – Broker-Dealer Registration**   * **Broker-Dealer Registration, or** * **Issuer-Dealer Registration or Exemption** | * Use a registered broker-dealer to market or sell Fund Interests (including your prime broker), or * If not using a registered broker, rely on federal Rule 3(a)(4)-1 for an exemption from broker-dealer registration for officers of the issuer. Officer cannot be involved in offerings of any other issuers; receives no commissions, has not been involved in the last 12 months in any other offering, or * Register the officer with FINRA, if person will be receiving compensation, commissions, finders' fees, or equity / stock for bringing investors into the Fund. Series 7 Exam, U-4, Fingerprint cards. No bonding or net capital required. |
| **State Broker-Dealer , or Issuer- Dealer, Registrations or Exemptions** | * Use registered broker-dealer, * Register any employee of the Issuer as an “agent of the Issuer” (Series 7 and 63 Exams required), U-4, some states require fingerprint cards, or * Rely on state Issuer-Dealer Exemptions for Officers or Directors of the Issuer, who are not taking any fees for bringing in investors. A few states have such exemptions. States which do not have exemptions are CT, NH, VT, FL, among others. Illinois exemption at §2. |
| **Investment Adviser’s Act of 1940: *Applies to entities, or fund managers, who manage more than 1 fund, or who advise investors in which fund to invest.*** | Fund Managers with at least $150 million under management, must register with the SEC as an Investment Advisor. Fund Managers with less than $150 million, must register with their home state, if that state requires it. Principals take Series 66 Exam (or has previous Series 65). Manager Files Form ADV with SEC on IARD electronic system, to register as investment adviser. SEC will audit Adviser approximately once every 3 years, unless facts determine more frequent audit. Solid & thorough disclosure on ADV Part I and Part II, as well as fund disclosure, trading compliance manual and AML compliance manual, will streamline the audit. |
| **State Investment Adviser Registration** | If Manager is SEC-Registered, then simple state electronic notifications (and small fees) required in states where Manager resides, and in states where fund clients reside (though not all states require notices where fund clients reside, and some de minimus exemptions may apply). If Manager is not SEC-Registered, then full state registration required, including paper and electronic components. |
| **Anti-Money Laundering: U.S. Patriot Act. *Applies to non-U.S. investors.*** | Fund manager must implement, and follow, Anti-Money Laundering Procedures, Compliance and Certifications by non-US investors, banks, brokers, others. |
| **Disaster Recovery** | Disaster recovery plan for data, physical assets and the human beings, have become the standard of Practice in the Fund Management industry. |