

Raising Capital for Business Expansion and Growth

Q: I own a business and need to raise additional capital, beyond what my lender is able to lend, to get my business to the next level of growth. How can I raise it?

A: While our region can boast of several large Fortune 500 companies which are traded on major stock exchanges, most companies in our area are closely held entities owned by a small group of shareholders or investors. Beyond a bank loan or SBA financing for start-up costs, these companies may need to raise additional capital from investors to take their businesses to the next level, and they either cannot afford to take their company "public" due to the high cost of complying with complicated securities regulations or the timing is not right to do so.



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Regulation D of the 1933 Securities Act, which the Securities and Exchange Commission ("SEC") recently simplified for smaller businesses, provides the legal mechanism and "safe harbor" exemptive relief from more complex securities laws for these companies to raise such capital.

Even if your securities offering will only include a small number of investors, you are legally required to provide a proper structure, disclosure documentation and agreements to raise equity capital. Raising such capital from investors in any amount requires very specific documentation, including a Private Placement Memorandum and a Subscription Agreement, both of which contain information that exceeds the scope of a typical business plan.

Regulation D offerings are typically utilized to raise from \$25,000 to \$50,000,000 in capital for a wide variety of business and industry types: corporate seed and expansion capital, real estate equity funding (acquisitions, development projects, and rehabilitations), capitalization for early to pre-IPO stage Internet, technology and biomedical companies, expansion funding for retail companies, and product development and distribution funding.

Various provisions of Regulation D set forth limitations and requirements on how much you can raise and from whom you can raise it. Rule 504 exempts issuers that are not subject to reporting under the Securities Exchange Act of 1934 in the offer and sale of up to \$1,000,000 of securities in a twelve-month period. Rule 505 provides an exemption for offers of up to \$5,000,000 of securities in a twelve-month period. Rule 506 exempts offers that are made to "accredited investors," and up to 35 non-accredited investors, with no dollar limit on the size of the offering. A new category (Rule 507) has been proposed that would exempt offers and sales of securities to "large accredited investors" and would permit limited advertising in connection with such offerings. Except as provided for under proposed Rule 507, no general solicitation or advertising is currently allowed in connection with Regulation D offerings.

Although the requirements for demonstrating substantial compliance with Regulation D may seem complicated and rigorous to business owners, it is a relatively small price to pay for the legal protection afforded by compliance with the regulation and for the ability to raise necessary capital.

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