

CROWDFUNDING FOR REAL ESTATE INVESTORS

REGULATION D RULE 506(C)
vs. REGULATION A+

By Jason Powell, Esq.

Foster
Garvey

COMPARISON CHART

	Rule 506(c)	Reg. A+, Tier 1	Reg. A+, Tier 2
Dollar Limit:	No limit	\$20MM within prior 12 months, but no more than \$6MM by selling security holders	\$75MM within prior 12 months, but no more than \$22.5MM by selling security holders
Manner of Offering:	No limitations on solicitation, can be marketed over the internet; TV, advertisements and solicitation on social media permitted	Public offering; can be marketed anywhere	Public offering; can be marketed anywhere
Eligible Issuers:	Both SEC registered and private companies can use exemption (U.S. and foreign)	U.S. and Canadian issuers; no SEC registered companies; no blank check companies; companies that have failed to make previous required filings excluded	U.S. and Canadian issuers; no SEC registered companies; no blank check companies; companies that have failed to make previous required filings excluded
Eligible Investors:	Only accredited investors may invest	No investor requirement	No investor requirement; however, investors who are natural persons and are not accredited investors are subject to an investment limit.
Ascertaining Accredited Investor Status:	Issuers must take reasonable steps to "verify" accredited status; may use various methods; non-exclusive list of methods that may be relied on as meeting requirements	Not required	Investor self-certification as to investment limits, provided issuer has no knowledge to the contrary
Filing Requirement:	File Form D with the SEC 15 days before use of general solicitation	Filing of Form 1-A with SEC: XML-fillable form with text file attachments	Filing of Form 1-A with SEC: XML-fillable form with text file attachments
Restrictions on Resale:	Restricted securities	Not restricted securities	Not restricted securities
Blue Sky Exemption:	No need to comply with state blue sky laws	Subject to state blue sky laws regarding pre-offering review, filing and anti-fraud	Not subject to state blue sky laws regarding pre-offering review; however, subject to state blue sky filing and antifraud requirements.
Limits on Investment Amount:	None	None	Limited to 10% of income or net worth per offering; no limit on accredited investors
Types of Security:	No limitations	Debt, equity, convertible debt	Debt, equity, convertible debt

	Rule 506(c)	Reg. A+, Tier 1	Reg. A+, Tier 2
Structure of Investment:	Special purpose vehicles can be used as intermediary for holdings by accredited investors	No Special purpose vehicles allowed; all investors appear in cap table	No Special purpose vehicles allowed; all investors appear in cap table
Disclosure:	Private Placement Memorandum typically used, but disclosure is driven by market demands and liability concerns	Offering Circular containing mandated disclosure must be filed with SEC	Offering Circular containing mandated disclosure must be filed with SEC
Use of offering materials outside of mandated disclosure.	Not required	“Test the waters” material permitted; must be filed with SEC and must also comply with state requirements, which may require registration at state level prior to use	“Test the waters” material permitted; all solicitation material must be filed with SEC
Financial Statements:	Not required	US GAAP financials required but need not be audited (under SEC requirements) unless already produced; many states require audited financials	US GAAP audited financial statements
SEC Review:	No review by SEC	SEC must review, comment and declare “qualified” before sale; state review also required	SEC must review, comment and declare “qualified” before sale
Ongoing Disclosure:	None	Exit report required	Annual, semi-annual and current reports required
Liability:	Liability under general Section 17/Rule 10b-5 anti-fraud provisions for any person making untrue statements; state law liability; potential “willful participant” liability for intermediary	Section 12(a)(2) liability (which extends to platforms); Section 17/10b-5 liability; state law liability; potential “willful participant” liability for intermediary	Section 12(a)(2) liability (which extends to platforms); Section 17/10b-5 liability; state law liability; potential “willful participant” liability for intermediary
Register under 1934 Securities Exchange Act	Registration required if 2,000 holders of record of equity securities	Conditional exemption from 34 Act registration for smaller companies if registered transfer agent used	Conditional exemption from 34 Act registration for smaller companies if registered transfer agent used
Intermediaries:	Intermediaries not required; any intermediaries used must be registered broker dealers or entities exempt from B/D registration (such as VC Funds or bulletin boards)	Intermediaries not required; any intermediaries used must be registered broker dealers or entities exempt from B/D registration (such as VC Funds or bulletin boards)	Intermediaries not required; any intermediaries used must be registered broker dealers or entities exempt from B/D registration (such as VC Funds or bulletin boards)
“Bad Actor” Rules:	Offering cannot be made if “Bad Actor” involved; issuer must take “reasonable care” to exclude Bad Actors, may use questionnaires	Offering cannot be made if “Bad Actor” involved; issuer must take “reasonable care” to exclude Bad Actors, may use questionnaires	Offering cannot be made if “Bad Actor” involved; issuer must take “reasonable care” to exclude Bad Actors, may use questionnaires

ABOUT THE AUTHOR

As a results-oriented dealmaker, Jason enjoys creating solutions that bring together great people, projects and capital.

When working on sophisticated business and financing transactions, Jason focuses on the big picture to ascertain his clients' strategic business direction and formulate risk mitigation strategies to protect corporate capital and profitability. His extensive experience includes advising businesses, lenders, investors, startups, and real estate investment companies and developers across the United States, on business transactions from formation to exit, acquisition, due diligence, real estate securities offerings, joint ventures, disposition and financing of real estate.

Passionate about real estate investing, Jason frequently speaks, writes and teaches on the topic, and is also a real estate investor himself. He has authored two books about private money lenders and is working on an eBook focusing on real estate syndication. Jason leads Foster Garvey's Real Estate Funds & Syndications Team.

CONTACT

jason.powell@foster.com | 503.553.3185

Foster Garvey

SEATTLE

1111 Third Avenue
Suite 3000
Seattle, WA 98101

T: 206.447.4400
F: 206.447.9700

PORTLAND

Bank of America
Financial Center
121 SW Morrison Street
11th Floor
Portland, OR 97204

T: 503.228.3939
F: 503.226.0259

WASHINGTON, D.C.

Flour Mill Building
1000 Potomac Street
N.W., Suite 200
Washington, D.C. 20007

T: 202.965.7880
F: 202.965.1729

NEW YORK

100 Wall Street
20th Floor
New York, NY 10005

T: 212.431.8700
F: 212.334.1278

SPOKANE

618 West Riverside
Avenue, Suite 300
Spokane, WA 99201

T: 509.777.1600
F: 509.777.1616

BEIJING

821 South Tower Beijing
Kerry Center 1 Guang
Hua Road Chaoyang
District Beijing, PRC
100020

T: 86.10.8529.9880
F: 86.10.8529.9881