

Regulation D Exemptions and Bad Actor Disqualification

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On September 23, 2013, an amendment to Rule 506 of Regulation D, concerning exemption from registration requirements for private placement offerings, went into effect. This amendment incorporates “bad actor” or “bad boy” provisions, which disqualify an offering from relying on the exemptions if a “covered person” has a relevant criminal conviction, regulatory or court order or other disqualifying event that occurred on or after September 23, 2013. An issuer must also disclose any disqualifying events that occurred before September 23, 2013, within a reasonable time before sale. The disqualification provisions do not apply if the issuer establishes that it did not know, and in the exercise of reasonable care could not have known, that a disqualification existed.

A wide variety of disqualifying events can trigger disclosure obligations and threaten the exemption from registration under Rule 506 and Regulation A+. As a result, anyone involved in the private placement marketplace should be familiar with the complexities of these new rules.

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