

# **Securities Compliance for Private Companies: A Practical Field Guide**

**By Dubs Herschlip**





# Securities Compliance for Private Companies: A Practical Field Guide

Private companies raise capital by selling equity, debt, SAFEs, options, and similar interests. Federal securities law covers every securities transaction. Unless an exemption applies, securities transactions must be registered with the SEC. Most private companies use exemptions. That route requires accurate disclosures, timely filings, compliance with Blue Sky regulations, and clean records.

## Why Securities Compliance Matters for Private Companies

Private companies raise money from friends, angel investors, venture capital funds, and employees. Those activities are subject to federal securities law. The SEC regulates the offer and sale of all securities. Public or private, one investor or a hundred—the rules apply. Compliance is the price of tapping outside capital.

- Every offer and sale requires registration or an exemption. Stock, convertible notes, SAFEs, options, and membership interests typically qualify as securities.
- Antifraud rules apply at all times. Material misstatements or omissions when talking to investors trigger liability. Exemption status does not change that.
- Enforcement consequences are real. Unlawful sales expose the company to investor rescission demands. The SEC can bring actions. Criminal penalties apply in extreme cases.

Boards and founders focus on valuation and terms. Compliance deserves the same attention. A social media post about your raise can be treated as an offer of securities. Plan your messages. Keep good records of what you said, when, and to whom.

## Securities Compliance for Private Companies: Scope,

Federal law defines “security” broadly. Common startup instruments qualify: stock, options, restricted stock, convertible instruments, and debt. Routine business updates are not offers, but efforts that stimulate investment interest may be. A post that mentions your raise, a pitch call, or a media interview that points to an upcoming round—these commonly count as offers. The safest path assumes these rules apply.



# Federal Securities Statutes and Exemptions

Four primary federal statutes frame securities regulation:

- **Securities Act of 1933.** Registration is required for offers and sales unless an exemption applies.
- **Securities Exchange Act of 1934.** Creates the SEC. Polices trading, reporting, and Rule 10b-5 antifraud.
- **Investment Advisers Act of 1940.** Advisers to private funds may need to register or file based on assets and activity.
- **Sarbanes-Oxley Act.** Certain provisions—such as those on recordkeeping and whistleblower protection—apply to private companies in limited circumstances.

Private company securities compliance also determines what counts as an "offer" or "sale." A sale includes any contract of sale or disposition for value. Transactions can trigger obligations earlier than founders expect. Build your compliance timeline to start before money moves.

## Offering Exemptions Private Companies Rely On

Most private raises rely on exemptions that replace full SEC registration. The right fit depends on who you are selling to, how you plan to market, and how much you expect to raise.

### Primary Exemptions (2025)

Rule 506(b)	Accredited + limited non-accredited	Not allowed	Form D + state notice	Unlimited
Rule 506(c)	Accredited only	Allowed (must verify)	Form D + state notice	Unlimited
Rule 504	Set by state	Usually limited	Form D + full state review	\$10M/year (2025)
Reg CF	Anyone (limits apply)	Allowed (portal)	Form C (portal + SEC)	\$5M/12 mo (2025)
Reg A Tier 2	Anyone (caps)	Allowed	Form 1-A (SEC + annual)	\$75M/12 mo (2025)
Rule 147/147A	In-state only	In-state only	Full state review	State set (typically none unless set by state law)

# Understanding Key Exemptions: A Deeper Dive

Building on the foundational understanding of federal securities statutes and offering exemptions, this section provides a more detailed look at the specific regulations private companies commonly leverage for capital raises.

1

## Regulation D (Rules 506(b), 506(c), and 504)

Rule 506(b) permits confidential raises with limited participation by non-accredited investors. Rule 506(c) allows public marketing if you verify accredited status. Both require Form D filing within 15 days of the first sale. "Bad actor" disqualification provisions apply to both. Rule 504 permits offerings up to \$10 million over 12 months. Investor eligibility and solicitation permissions vary by state. Most Rule 504 offerings require coordination with state regulators and cannot preempt state registration review.

2

## Regulation Crowdfunding

Regulation Crowdfunding enables smaller raises through SEC-registered funding portals with income-based investor limits and mandatory disclosures. Issuer caps apply on a rolling 12-month basis. Investor contribution limits scale with income and net worth. Specific disclosure reports are mandatory. The SEC monitors portal compliance closely, particularly disclosure quality and portal compliance.

3

## Regulation A

Regulation A provides a streamlined, public-style offering process with lighter ongoing disclosure. "Testing the waters" provisions allow gauging investor interest before filing. Tier 2 offerings preempt state review, though fall under SEC oversight.

4

## Rules 147 and 147A

Intrastate exemptions suited to local capital raises. Offers and sales are limited to in-state residents, and full state compliance is required.

## 2025 SEC Regulatory Developments and Priorities

In 2025, SEC rulemaking continues to refine private offering frameworks, including Regulation D safe harbors, Regulation Crowdfunding thresholds, and electronic Form D filing.

# Detailed Exemptions and Evolving Compliance Landscape

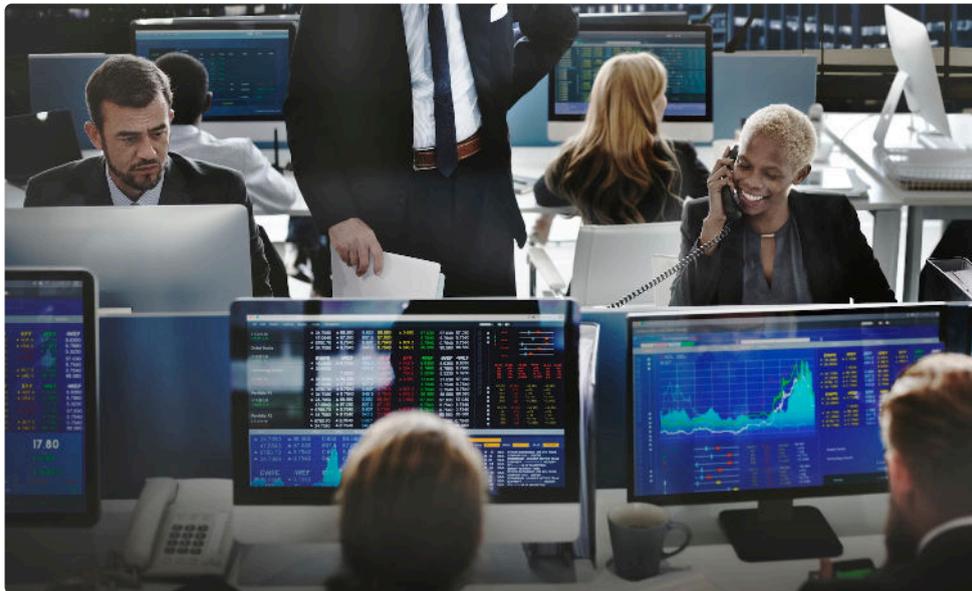
Continuing our deep dive into offering exemptions, we'll now explore Regulation A and Rules 147/147A in more detail, followed by a look at the latest SEC regulatory developments and compliance priorities for 2025.

## Regulation A

Regulation A creates a streamlined public-style offering process. File Form 1-A and accept lighter ongoing disclosure obligations. Many issuers value the "testing the waters" provisions that permit preliminary interest gauging before formal filing. State registration review is preempted for Tier 2 offerings, saving time, though SEC review remains.

## Rule 147 and 147A

Intrastate exemptions support geographically concentrated raises. Rule 147 and Rule 147A limit offers and sales to residents of a single state. They require state-level filing compliance. This pathway commonly suits local businesses where investors and operations sit in one state.



## 2025 SEC Regulatory Developments and Compliance Priorities

The SEC continues to adjust private offering frameworks in 2025. Ongoing rulemaking affects Regulation D safe harbors, Regulation Crowdfunding thresholds, and Form D electronic filing requirements. Two areas have drawn increased regulatory focus: off-channel communications and marketing practices in private fundraising.

### Off-channel communications

Off-channel communications now receive heightened scrutiny. Investor outreach via messaging apps, social media, and informal channels can trigger general solicitation rules. The SEC has signaled that analysis extends beyond traditional advertising to digital and social platforms. Private companies conducting confidential raises under Rule 506(b) face particular risk when investor communications migrate to uncontrolled channels.

### Marketing consistency

Marketing rule interpretation for private offerings has also evolved. Issuers using general solicitation under Rule 506(c) or Regulation A must ensure marketing materials remain consistent with formal disclosure documents. Misleading performance projections or risk minimization create exposure.

Practical compliance has shifted in response. The 2025-26 regulatory environment emphasizes three areas: documented investor verification procedures, systematic recordkeeping of investor communications, and periodic compliance training for teams involved in fundraising. These practices are now widely recognized as foundational rather than aspirational.

# Equity Compensation and Disclosure in Private Offerings

This section delves into critical aspects of private company operations: managing equity compensation under Rule 701 and navigating the crucial disclosure and anti-fraud duties that underpin all private offerings, alongside the complexities of state Blue Sky Laws.

## Equity Compensation and Rule 701 for Private Companies

Startups commonly grant options, restricted stock units (RSUs), or restricted stock to employees and advisors. Rule 701 provides a Securities Act exemption for compensatory issuances by non-reporting companies. The rule imposes a rolling 12-month sales limit and triggers enhanced disclosure requirements—risk factors and financial statements—once specified thresholds are exceeded.

- Written equity plans require board approval and fair market value documentation.
- The 12-month Rule 701 limit applies to the value of equity awards granted, including option exercises and RSU settlements.
- Enhanced disclosures, including risk factors and financial statements, must be delivered before crossing disclosure thresholds.
- State Blue Sky exemptions for compensatory issuances vary. Most states align with federal frameworks but details differ.

Equity compensation compliance typically requires coordination across finance, legal, and HR. Your cap table management system should track grants, vesting schedules, exercises, and restrictive legends. Simpler tracking tools often miss 12-month rolling calculations, creating late-disclosure risk.

## Disclosure and Anti-Fraud Duties in Private Offerings

Valid exemptions do not eliminate antifraud obligations. You must disclose all material facts investors need to make an informed decision. You must not make false or misleading statements. That covers pitch decks, data rooms, Q&A sessions, emails, and portal pages.

- Give a balanced view of the business. Discuss risks, not just upside.
- Update disclosures promptly when material facts change.
- Maintain detailed records of all investor communications. Good records help if a dispute arises later.

Rule 10b-5 under the Exchange Act establishes the antifraud standard. Many issuers add a short risk summary to decks and confirm facts in a disclosure schedule. An independent legal review of offering materials before launch reduces misstatement risk.

## State Blue Sky Laws and NSMIA Preemption in Private Offerings

State securities regulation operates alongside federal frameworks. Your federal exemption does not always end state work. Some offerings are "covered securities," which preempt state registration. Most still require state notice filings and fees. Others—like intrastate offerings or some Rule 504 deals—need full state registration.

- Rule 506 offerings**  
Preempt state review. File state notices on time and pay fees.
- Regulation Crowdfunding**  
State preemption applies in key areas, though portal and SEC filing rules still govern.
- Intrastate and Rule 504**  
Expect state registration or an in-state exemption process.

Multi-state investor bases create compliance complexity. Build a Blue Sky checklist by state. Log due dates. If you are conducting general solicitation under Rule 506(c), confirm how investor accreditation will be verified and who bears the cost.

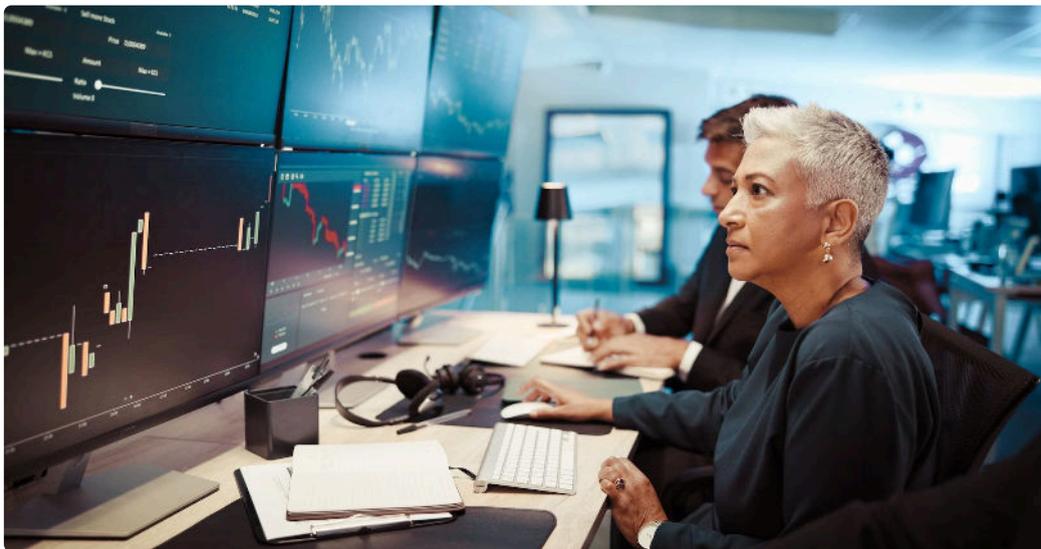
# Private Companies Filing With SEC: Triggers, Thresholds, and Forms

Private companies usually do not file 10-K and 10-Q reports. That can change. Section 12(g) of the Exchange Act can force registration and public reporting when a private company exceeds asset and shareholder thresholds. After the JOBS Act, the holder threshold increased, making it less likely that private companies will inadvertently trigger public reporting requirements.

Common trigger. More than \$10 million in assets and holders of record above a set level can trigger registration. The JOBS Act raised the threshold to 2,000 holders of record, with a separate limit for non-accredited holders.

1	2
<b>Form 10</b> Used to register a class of securities when you cross a threshold. Reporting duties follow.	<b>Offering filings</b> Form D for Reg D. Form C for Reg CF. Form 1-A for Regulation A. These are not full public company reports, but they are mandatory.

Threshold monitoring requires distinguishing holders of record from beneficial owners. Track asset levels each quarter. Work with counsel to measure both before thresholds approach trigger levels.



## Resale Restrictions and Secondary Liquidity for Private Company Securities

Most private company securities are restricted. Transfers are limited by federal law and by contract. Investors often ask about secondary liquidity. You need clear answers that match your charter, investor rights agreement, and federal rules.

### → Restrictive legends

These signal that a sale must meet an exemption or registration.

### → Company consent

Right of first refusal and transfer approvals are common in private company documents.

### → Rule 144

Sets holding period and current information requirements for resales of restricted securities. Track compliance timelines before approving transfers.

### → Private secondary markets

Later-stage companies sometimes arrange controlled secondary windows with broker-dealers. The SEC monitors these markets.

Document your policy for secondary sales. State who may sell, when windows open, what approvals are needed, and how compliance checks will work. That lowers friction and avoids last-minute legal surprises.

# Regulatory Compliance for Securities in Private Companies: Building a Program

A repeatable program turns one-off projects into a system. Assign a securities compliance officer or name a lead on the legal or finance team. For many startups, this is a fractional role supported by outside counsel. The goal is simple: no offering happens without a short checklist, the right filings, and clean records.

## Typical compliance workflow:

01

### Map the transaction.

Identify what you are selling, to whom, and how you will market.  
Outcome: correct exemption choice.

03

### Verify investors.

Confirm accreditation where needed and log the method. Outcome: exemption preserved.

05

### Close and record.

Collect signatures, funds, cap table updates, and legends. Outcome: clean audit trail.

02

### Draft disclosures.

Build a data room, risk summary, and subscription documents.  
Outcome: balanced and accurate materials.

04

### Calendar filings.

Form D, state notices, and portal reports. Outcome: no missed deadlines.

06

### Monitor.

Track Blue Sky renewals, 12-month limits, and holder counts. Outcome: lower future risk.



## Securities Compliance Training

Training helps teams spot risks early. A short internal course on offers and sales, general solicitation rules, antifraud duties, and state notices pays for itself. You can add outside programs that issue a securities compliance certification to your compliance officer or counsel team. Update training each year or before a major raise.

## Working with Securities Compliance Advisors and Outside Counsel

Most companies bring in securities compliance advisors and a broker-dealer at set points. Counsel helps structure the raise, draft documents, and file forms. A broker-dealer may be needed if you plan to market broadly or if you raise more than once in a year under issuer safe harbor concepts. Many boards lean on an investment banker, a securities attorney, or a due diligence firm to review materials.

# Risks, Penalties, and Enforcement Actions for Non-Compliance

Non-compliance can unwind a round. It can also follow the company for years. Investors can ask for their money back with interest when a sale violated registration rules and no valid exemption applied. The SEC can bring actions for antifraud or bad actor lapses. It has pursued private companies and their leaders in high-profile cases.

## Rescission risk.

Unlawful sales expose the company to repurchase demands. That can stress cash and put the business plan at risk.

## SEC enforcement.

Offers by social media posts, misleading statements, or ignoring filings can trigger actions.

## Sarbanes-Oxley duties.

Provisions relating to destruction of records and whistleblower retaliation can apply in circumstances involving federal investigations, even for private companies.



## Top Compliance Resources for Private Companies in 2025

Private company compliance draws on multiple authoritative sources. The SEC maintains dedicated resources for small businesses, including exemption guidance, filing instructions, and educational materials. The SEC Small Business Capital Raising portal provides comprehensive exemption overviews and recent rule amendments.

Law firm compliance checklists offer practical implementation guidance. DFIN's private company compliance resources, Morgan Lewis's annual securities updates, and Sidley Austin's private capital markets guides provide current best practices and regulatory developments. These resources commonly address emerging issues like off-channel communications, updated verification standards, and state-federal coordination.

Industry organizations also publish useful guidance. The Private Company Director network and venture capital associations often release practitioner-focused compliance updates tied to specific transaction types.

## FAQ: Securities Compliance for Private Companies

### Do securities laws apply to private companies?

Yes. The SEC regulates the offer and sale of all securities. Every offer and sale must be registered or exempt, even if the sale is to one person or to friends and family. Antifraud rules also apply to all offers and sales.

### Do private companies need to report to the SEC?

Usually no. Private companies file limited forms when they use exemptions, such as Form D. Full periodic reporting can be triggered by Section 12(g) thresholds on assets and holders of record, or by registering securities for listing. When triggered, a private company must file reports like 10-K, 10-Q, and 8-K.

# FAQ: Securities Compliance for Private Companies

## Does the Sarbanes-Oxley Act apply to private companies?

Some provisions, such as those relating to document preservation and whistleblower protections, can apply to private companies, especially when interacting with public companies or during federal investigations. Many private firms adopt SOX-like control practices as they plan for an IPO.

## What is Rule 701 for private companies?

Rule 701 is a Securities Act exemption for non-reporting companies that issue equity for compensation. It sets 12-month sale limits and adds an enhanced disclosure package once a threshold is crossed, including risk factors and financial statements. It applies to options, RSUs, and similar grants.

## Washington State

Washington state has its own particular rules that should be reviewed and complied with for businesses held by Washingtonians, particularly the Washington Capital Gains Tax and Washington's expanded definition of retail sales, subject to its sales tax.

The Washington Capital Gains Tax is applied to Washington long-term capital gains (assets held for more than one year) above an annual standard deduction, which was \$270,000 for tax year 2024, was \$278,000 for 2025, and is adjusted annually for inflation. There are important deductions or exemptions that may apply to you.

## Washington State Retail Sales Tax Expansion

Washington's expansive interpretation of retail sales affects most businesses in Washington effective October 1, 2025, where the expanded definition of "retail sale" includes several services that were previously exempt, making them subject to both the retailing business and occupation (B&O) tax and retail sales tax under Engrossed Substitute Senate Bill (ESSB) 5814. The law adds the following business activities to the definition of a "retail sale":

- Advertising services (both digital and non-digital, including design, online referrals, and campaign planning);
- Information technology (IT) services (including training, support, data entry/processing, and network operations);
- Custom software sales and development;
- Custom website development services;
- Customization of prewritten software;
- Investigation, security, and armored car services;
- Temporary staffing services (excluding staffing for hospitals);
- Live presentations (including in-person and online seminars/workshops, but generally excluding accredited K-12 and higher education courses);

Doing Business in Washington is subject to the following local tax and regulation:

#### **Tax Rates:**

The state retail sales tax rate is 6.5%, plus local sales taxes, resulting in a combined rate that can range from 7.7% to 10.35% depending on the location of the sale or use.

#### **Nexus:**

Out-of-state businesses may be required to register and collect sales tax if they meet Washington's economic nexus threshold of more than \$100,000 in annual combined gross receipts sourced to the state.

#### **Use Tax (called B&O Tax):**

Washington businesses that purchase these newly taxable services from out-of-state providers who do not collect sales tax are responsible for self-reporting and paying the use tax.

## **Useful Resources**

Here are some useful resources:

<https://dor.wa.gov/taxes-rates/other-taxes/capital-gains-tax>

<https://dor.wa.gov/taxes-rates/retail-sales-tax/services-newly-subject-retail-sales-tax>

## **About Dubs Herschlip**

I, Dubs Herschlip, have helped form 1,000's of small businesses and advise them on limiting liability, asset protection, purchases, sales, banking, credit, insurance, contracts, risk-assessment, insurance disputes, litigation, licensing and regulatory compliance, employment law, privacy laws, relations between owners, and business dissolutions. This gives me experience in recognizing a properly established and maintained business for acquisition or sale, and any formalities that should be finalized prior to a sale. Further, I have helped mid-size businesses (\$1,000,000-50,000,000) with best practices for investment, purchase, sale and due diligence including compliance with franchise agreements, IP agreements, SBA loans and commercial leases. I would be honored to assist you with your business' next phase, whether it is for sale or expansion.

## **About Dunlap Bennett & Ludwig,**

At Dunlap Bennett & Ludwig, we work with tech companies on patent strategies that support business success. Our team understands both the technical challenges of protecting innovation and the business realities of startup life.

Dunlap Bennett & Ludwig is a veteran-owned law firm with offices across multiple states. Our team works with tech companies navigating the complexities of intellectual property protection.

To learn more about Dunlap Bennett & Ludwig, call 888-306-4030 or email [clientservices@dbllawyers.com](mailto:clientservices@dbllawyers.com).

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