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## Private Placement Memorandums Q & A

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## Securities Lawyer 101

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# Private Placement Memorandums Q & A

A private placement memorandum (“[PPM](#)”) is also referred to as a confidential offering circular or memorandum. PPM’s are used by private companies in going public transactions and by existing public companies to raise capital by selling either debt or equity in an exempt offering. Most exempt offerings are private placements.

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## Q. What Disclosures Are Required in Private Placement Memorandums?

A. PPM disclosures vary depending on a couple of factors including whether the investor is accredited or non-accredited and whether the Company is subject to the Securities and Exchange Commission’s (“SEC”) reporting requirements, and a few other factors.

## Q. What is a Regulation D Private Placement?

A. The common exemptions from registration for companies using PPM’s to raise capital are provided by under [Regulation D](#) of the Securities Act of 1933. With the new [Rule 506\(c\)](#) allowing general solicitation, the popularity of Rule 506(c) offerings will increase.

## Q. What is the Rule 504 Exemption?

A. [Rule 504](#) which allows a Company not subject to the reporting requirements of Sections 13 or 15(d) of the Securities and Exchange Act of 1934 to raise up to \$1 million within a 12 month period. Rule 504 is often used by private companies going public to obtain seed capital.

## Q. Are Issuers Required to Provide a Private Placement Memorandum in Rule 504 Offerings?

A. It does not have specific disclosure requirements and as such, so a PPM is not required.

## Q. What is Rule 505?

Using Rule 505, reporting and non-reporting companies may raise up to \$5 million in a 12 month period. Rule 505 allows issuers to raise capital from an unlimited number of accredited investors and up to 35 non-accredited investors.

When Rule 505 private placement is sold to accredited investors, there is no informational requirement and many times a PPM is not used. If a Company raises capital from even one non-accredited investor, unless it is an SEC filer, specific disclosures comparable to those found in a registration statement under the Securities Act must be provided to investors.

## Q. What is Rule 506?

Rule 506(b) permits companies to [raise capital](#) from an unlimited number of accredited investors and up to 35 non-accredited investors so long as general solicitation and advertising is not used in connection with the offering. Rule 506(c) also allows companies to use general [solicitation](#) and advertising to sell their offering so long as sales are only made to accredited investors and certain verification requirements are complied with.

If a Company raises capital from even one non-accredited investor, unless it is an SEC filer, specific disclosures comparable to those found in a registration statement under the Securities Act must be made.

**Q. Do the Antifraud Provisions Apply to Private Placements?**

A. Yes. The Antifraud provisions apply to all offerings even private placements. Even if a securities offering is exempt from registration, the anti-fraud provisions of federal and state securities laws are still applicable.

**Q. What Disclosures Are Required in Private Placement Memorandums?**

A. When a Company uses a PPM to raise capital, it should be prepared to provide investors with significant disclosures including financial information. The consequences of the Company failing to do so in its PPM can prevent the Company's offering from qualifying for an exemption from the securities laws. It is therefore important for the Issuer to adhere strictly to the requirements for making a non-registered offering of its securities. Should it fail to do so, the issuer, its directors and its executive officers become personally liable and the investors will be able to rescind their investment.

**Q. What Specific Disclosures Are Non-Reporting Companies Obligated to Provide to Non-Accredited Investors in their Private Placement Memorandums in Offerings under Rule 505 and 506?**

If the issuer is a non-reporting company, it should provide complete and accurate provide detailed information about, among other things:

- its business and industry;
- litigation;
- its authorized and outstanding securities;
- a description of the offering terms and whether any commissions or finders' fees will be paid in connection with the offering;
- the risks of the offering including business, economic and other risks of investing in the securities being offered by the Company sufficient to enable the

purchaser to make an informed investment decision;

- its management; and
- its corporate history.

If the Company is seeking to raise up to \$2,000,000, it should provide an audited balance sheet for the prior two years which is less than 6 months old. For offerings over \$7,500,000, it must provide the financial statements that would be required if a registration statement filed under the Securities Act.

**Q. What Specific Disclosures Are Reporting Companies Obligated to Provide to Non-Accredited Investors in Their Private Placement Memorandums in Offerings under Rule 505 and 506?**

SEC reporting companies must provide non-accredited investors with a brief description of any information concerning the offering that is provided to accredited investors and give each non-accredited purchaser the opportunity to ask questions and receive answers concerning the terms and conditions of the offering. Potential investors are also entitled to any additional information which the Company possesses or can acquire without unreasonable effort or expense that is necessary to verify the accuracy of information furnished to the purchaser.

**Q. What Compliance Measures Should Management Undertake to Ensure Compliance With the SEC's Disclosure Requirements**

A. Upon compilation of the PPM, all members of the Company's management should read it for accuracy and ensure that the information contained therein is truthful and that all material information is disclosed. It is critical that the PPM not contain misstatements of material information or omissions of material facts, in order to make the disclosures not misleading. The PPM should be amended if any of the disclosures made in the PPM become inaccurate or misleading. The Company should not use any sales literature that has not been

reviewed and approved by its legal counsel. Management and representatives should be cautious in any verbal or written statements to potential investors that may contradict or modify the PPM disclosures. Most importantly, the Company and its representatives should never make representations about increases in its stock price or offer assurances about the Company's prospects, its profits, or potential returns on an investment.

The failure to provide proper disclosures in a PPM may subject the Company as well as its management to civil action including rescission rights. Both could also be subject to SEC Enforcement actions including fines, prohibition on future securities offerings, and criminal actions should the Department of Justice become involved.

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For further information about [Private Placement Memorandums](#), please contact [Brenda Hamilton](#), Securities Attorney at 101 Plaza Real South, Suite 202 North, Boca Raton, FL, (561) 416-8956, or by email at [info@securitieslawyer101.com](mailto:info@securitieslawyer101.com). This securities law Q & A is provided as a general or informational service to clients and friends of [Hamilton & Associates Law Group, P.A.](#), and should not be construed as, and does not constitute legal advice on any specific matter, nor does this message create an attorney-client relationship. Please note that prior results discussed herein do not guarantee similar outcomes.

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