CAGANCO INCORPORATED

Alternative Equity Funding Options

– some choices, but not comprehensive

[Does not address SAFEs or notes]

By Dennis Cagan

There are any number of methods of raising capital for early-stage companies. Some are very simple, but can lead to problems later, and some are very complicated, and can also lead to troubles. Others are very simple and effective, with a minimum of regulatory compliance. Some have long-term tax benefits for investors. The JOBS Act [1] expanded the options available to smaller companies. In addition, crowd funding, and more recently digital platforms, crypto transactions, and digital tokens have further confused the landscape. This overview is not intended to be comprehensive, but simply to provide an overview of some of the more common approaches.

Here are four types of fundraising options that you might want to consider, all can be done in one way or another with some of the online platforms. Just note that the 506(b) does not allow general solicitation (advertising/promotion) of the offer to investors with which you do not have a prior relationship:

1. Regulation D, Rule 506(c)
2. Regulation D, Rule 506(b)
3. Regulation A (there are 2 types: Reg A-Tier 1 and Reg A-Tier 2)
4. Crowdfunding

506(c) is restricted to accredited investors and there are stricter rules with investor accreditation using 506(c) versus with 506(b).

- This link talks about the differences.
- This link gives a good overview of the 506(b) and 506(c) private fundraising options.
- This link is an informative video on the subject.

Most online platforms do several things:

a) They vet the investment opportunity for the investors.
b) They qualify the investors to make sure they are accredited (506(c) requires a third party to do this).
c) They arrange all the relevant investor documents for a single investment opportunity in standard layouts in an online data room.
d) They provide the FINRA registered broker dealer that is to perform the necessary due diligence and perform the money transaction.
e) The better websites have a standard reporting format that they use for each investment opportunity. This allows the potential investors to compare different investment opportunities on a somewhat apples-to-apples basis.

With all these options, you will need a lawyer or experienced advisor to prepare documents. Some sites provide the lawyer at a fee, others require you to come with documents completed.

[1] The Jumpstart Our Business Startups Act, or JOBS Act, is a law intended to encourage funding of small businesses in the United States by easing many of the country's securities regulations. It was signed into law on April 5, 2012. Title III, also known as the CROWDFUND Act, has drawn the most public attention because it creates a way for companies to use crowdfunding to issue securities, something that was not previously permitted. Title II went into effect on September 23, 2013.[2] On October 30, 2015, the SEC adopted final rules allowing Title III equity crowdfunding. These rules went into effect on May 16, 2016; this section of the law is known as Regulation CF.

Comparison Chart 506(b) vs 506(c)

	Rule 506(b)	*Rule 506(c)*
Permitted Investors	Accredited investors and up to 35 non-accredited investors, as long as the non-accredited investors are "sophisticated."	Accredited investors only.
Verification of Accredited Investors	Issuer may rely on a statement by the investor to reach a reasonable belief that he, she, or it is accredited.	Issuer must verify that investors are accredited, typically by using a third-party like VerifyInvestor.
Dollar Limits	• No limit on amount raised. • No limit on how much each investor can invest.	• No limit on amount raised. • No limit on how much each investor can invest.
Total Number of Shareholders	In general, any company with more than 500 non-accredited investors or more than 2,000 total investors must become a full "reporting company" under the Exchange Act.	In general, any company with more than 500 non-accredited investors or more than 2,000 total investors must become a full "reporting company" under the Exchange Act.
Information Required	• If the offering includes only accredited investors, no information is required by law, although we include information anyway to inform investors and avoid Rule 10b-5 liability. • If the offering includes even one non-accredited investor, the law requires that the issuer provide lots of information.	No information is required by law, although we include information anyway to inform investors and avoid Rule 10b-5 liability.
SEC Registration	No.	No.
State Registration	No.	No.
Post-Sale Filings	• Form D to the SEC. • Corresponding forms to each State where an investor lives.	• Form D to the SEC. • Corresponding forms to each State where an investor lives.
Advertising	No advertising of actual deals permitted. Sales may be made only to investors with whom issuer has a pre-existing relationship.	Advertising of any kind is allowed. Internet, TV, radio, leaflets dropped from planes, anything.

Summary Chart of Exempt Offering Alternatives

Below we provide a summary comparison of various securities exemptions.

Type of Offering	Dollar Limit	Manner of Offering	Issuer and Investor Requirements	Filing Requirement	Restriction on Resale	Blue Sky Exemption
Section 3(a)(11)	None.	No limitation other than to maintain intrastate character of offering.	Issuer and investors must be resident in state. No limitation on number of investors.	None.	Securities must rest within the state.	Need to comply with state blue sky laws by registration or state exemption.
Rule 147	None.	No limitation other than to maintain intrastate character of offering.	Issuer must be resident in state, using "principal place of business" and jurisdiction of organization to determine residency, and meet at least one "doing business" requirement. Investors must be resident in state, using "principal place of business" to determine residency. No limitation on number of investors.	None.	Limits on resales to persons residing within the state or territory of the offering for 6 months.	Need to comply with state blue sky laws by registration or state exemption.
Rule 147A	None.	General solicitation permitted, provided that sales are made only to residents of the state or territory in which the issuer is resident. Offers may be made to out-of-state residents.	Issuer must be resident in state, using "principal place of business" to determine residency, and meet at least one "doing business" requirement. Investors must be resident in state, using "principal place of business" to determine residency. No limitation on number of investors.	None.	Limits on resales to persons residing within the state or territory of the offering for 6 months.	Need to comply with state blue sky laws by registration or state exemption.
Section 4(a)(2)	None.	No general solicitation or general advertising.	Investors must meet sophistication and access to information test so as not to need protection of registration.	None.	Restricted securities.	Need to comply with state blue sky laws by registration or state exemption.
Rule 504 Regulation D	$5 million within prior 12 months.	No general solicitation or general advertising unless registered in a state requiring use of a substantive disclosure document or sold under state exemption for sales to accredited investors with general solicitation.	Available to non-reporting companies only that are not investment companies or blank check companies. Certain "bad actors" are disqualified from participating in Rule 504 offerings.	File Form D with SEC not later than 15 days after first sale. Filing not a condition of the exemption.	Restricted unless registered in a state requiring use of a substantive disclosure document or sold under state exemption for sale to accredited investors with general solicitation.	Need to comply with state blue sky laws by registration or state exemption.

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