Regulation D Exemptions from Normal Securities Registration/Filing:

While there are other provisions for exemptions from securities registration/filing, the most commonly used exemptions derive from Rules 504 through 506 under Regulation D of the federal Securities Act of 1933, as amended. The other Rules include definitions, general guidelines for exemptions, etc. (For example, the definition of "accredited investors" is the same regardless of which exemption is used.)

The advantages of exemption from securities registration/filing include:

Cost: While the preparation of a private placement memorandum (PPM), disclosure, can cost from $2,500 to $20,000, a full securities registration/filing can cost $50,000 or more. Form D filing is inexpensive, or free. Also, the sale of exempt securities does not require the use of licensed securities dealers (saving fees and commissions).
Time: It is much faster to prepare a PPM, even a large one, compared to a full filing. Part of this is because a PPM incorporates a business plan and financial statements/pro forma's, which might be on hand anyway.

Regulations that apply to any exemption allowed under Regulation D rules:

Regardless of which rule provides for the exemption, an issuer of exempt securities may not generally advertise or market its offering or otherwise publicly solicit the sale the securities. ("Public" marketing includes solicitations in general publications, on radio or TV or display on non-restricted Internet pages.)

Purchasers must receive restricted securities, meaning that the securities may not be resold without either registration or an exemption. This suggests, or mandates, the need for there to have been a pre-existing relationship between the issuer of the securities and the investor(s).

Regardless of other disclosure requirements, or whether the investors are accredited investors or non-accredited, the anti-fraud requirements of the securities laws must be met. This requires the absence of false and/or misleading statements; as well as the lack of omissions that might make what was otherwise disclosed, to be misleading. *Note: The provisions regarding omissions are a bit of a "catch" because they mandate that a certain sufficient amount of information be made available to investors even when the specific disclosures are not detailed in the law. This implies the good sense of always exceeding disclosure requirements.*

Rule 504

Provides an exemption for the offer and sale of up to $1,000,000 of securities in a single twelve month period. Unlike some other exemptions, **Rule 504** allows for a private sale without any specific disclosure requirements, although care should be taken to avoid violating the anti-fraud provisions of the federal securities laws.

Rule 505

Allows a company to raise an aggregate amount of up to $5,000,000 over a twelve-month period. A **Rule 505** offering is available to an unlimited number of accredited investors and up to 35 non-accredited investors. Unlike a Rule 504 offering, non-accredited investors must receive a substantive disclosure document that includes financial statements.

Rule 506

Contains no limit on the amount of capital that can be raised in an offering. **Rule 506** is available to an unlimited number of accredited investors and up to 35 non-accredited investors. Unlike **Rule 505**, all non-accredited investors must be "sophisticated". That is, either alone or via a purchaser representative, they "must have sufficient knowledge and experience in financial and business matters to make them capable of evaluating the merits and risks of the prospective investment." As with Rule 505, non-accredited investors must receive a substantive disclosure document that includes financial statements.

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Summary of Regulation D Exemptions from Securities Registration:

	Rule 504	Rule 505	Rule 506
Maximum Invest. Sales over 12 Months	To $1,000,000	To $5,000,000,	No Limit
Resale w/o registration/exemption?	No	No	No
Public Marketing, solicitation for sale?	No	No	No
Disclosures Required?	Yes, but not specific	**Very specific**	**Very Specific**
Financial Statements Disclosures Req?	No	**Yes**	**Yes**
Investors must be *accredited*?	No	Yes, subj. to limitation	Yes, subj. to limitation
Limitation on # of non-accred investors	N/A	35	***35***

.Definitions of Accredited (individual) Investors:

*Individual, accredited investors are defined by their minimum net worth ($1,000,000) or minimum income ($200,000 for singles; $300,000 for couples) received for the previous 2 years and expected to continue.

Notes Regarding Disclosures: Disclosure is made via a Private Placement Memorandum which combines a business plan; financial statements; and specific additional information disclosures; with SEC-mandated warning and disclaimer language. [While all PPM's have similar format and structure, and most are 30-60 long, they can exceed 200 pages in length.]

**Financial statements are specifically referenced for non-accredited investors.

***Even the permitted, non-accredited investors must be "sophisticated". That is, they "must have sufficient knowledge and experience in financial and business matters to make them capable of evaluating the merits and risks of the prospective investment."

When disclosure requirements are not exactly defined:

A. All investors must still be provided with enough disclosure to enable them to make an intelligent decision, and evaluate the risk of the investment.

B. There can be no false statements, no misleading statements, and no omissions that might make the disclosures misleading (to non-accredited or accredited investors), regardless of the specific disclosures that are otherwise mandated, to avoid violating the fraud provisions of the securities laws.

"Blue Sky" Laws: Require minimal notice of the sale of securities, even when exempt from full filing.

Federal - Form D must be filed with the SEC, generally within one week of the sale of the first security. Though the paper form is still available, paper filing has been replaced by mandated, online submission.

State - Varies by state, but may require a state version for Form D

State Exemptions:

State regulatory requirements for exemptions from securities registration/filing vary widely at the state level. They range from nothing, if federal regulations are met (FL, for example); to the filing of a state Blue Sky notice only, etc. Some states have provisions for an additional level of exemption when the number of investors involved in any particular offering does not exceed 10 (ie: NJ, CA), though the Blue Sky notice is still required.