SP LEGAL ADVISORS PLLC

Founder Workshop

Five Mistakes That Sink a Private Offering

A plain-English guide to raising capital under Regulation D — and the missteps that quietly cost founders the exemption.

Prepared for the SP Legal Advisors founder workshop series
Current as of June 2026 · Counselors at Law · Est. 2020

Why this workshop

Most exemption failures are not exotic. They are routine, avoidable, and almost always traceable to one of five recurring missteps. This session walks through each in plain English — what it looks like, why it breaks the deal, and how to stay clean.

01 **Advertising before you are allowed to**
General solicitation under Rule 506(b)

02 **Picking the wrong lane**
506(b) vs. 506(c) — and the website trap

03 **Trusting the investor checkbox**
Verifying accredited status under 506(c)

04 **Paying "the friend who wants a cut"**
Unregistered finders and commissions

05 **Treating Form D as an afterthought**
Filings, deadlines, and bad-actor checks

THE FIVE MISSTEPS, IN ORDER

01 **Solicitation**
Advertise too soon

02 **The lane**
506(b) vs. 506(c)

03 **Verification**
Trust the checkbox

04 **Finders**
Pay a commission

05 **Form D**
File late or wrong

MISTAKE NO. 1 · GENERAL SOLICITATION

Advertising the raise before you are allowed to

01

THE MISSTEP

Rule 506(b) — the relationship-driven private placement most founders use first — flatly prohibits general solicitation and advertising. A single public mention of the raise can blow the exemption.

PLAIN-ENGLISH EXAMPLE

"We're raising our seed round — DM me to get in" posted on LinkedIn or X. That one post reaches a wide, anonymous audience with a call to invest. The 506(b) exemption is now at risk, and early investors may gain rescission rights — the right to demand their money back.

HOW TO STAY CLEAN

Doing a quiet 506(b)? No social posts, no demo-day pitches, no ads.

Offer only to people you already have a real, prior relationship with.

Keep the website to brand and product — strip offering terms off public pages.

If broad outreach is the strategy, use 506(c) instead (see Mistake 2).

IS THIS GENERAL SOLICITATION?

1 **Wide, anonymous audience?**
Posted where strangers can see it

▼

2 **A call to invest?**
Mentions the raise or "DM to get in"

▼

3 **Does it prime the market?**
Builds public interest in the deal

All three → **likely general solicitation**

Source: The Startup Law Blog · Procopio

MISTAKE NO. 2 · CHOOSING THE EXEMPTION

Picking the wrong lane — and the website trap

02

THE MISSTEP

506(b) and 506(c) are different deals. 506(b): no advertising, but you may include up to 35 non-accredited investors. 506(c): advertise freely, but every investor must be a verified accredited investor. Founders routinely mix the two up.

PLAIN-ENGLISH EXAMPLE

A growth-stage company quietly raising under 506(b) lets marketing post the round terms and a "contact us to invest" button on the public site. Two months later, counsel warns the SEC may treat the website as a general solicitation — putting the whole exemption at risk.

HOW TO STAY CLEAN

- Decide the lane before the first conversation — not mid-raise.
- 506(b) = relationship-driven and quiet. 506(c) = public but verified.
- For a 506(b) raise, gate investor materials behind a login; keep public pages generic.
- Coordinate marketing and legal before anything about the raise goes live.

TWO LANES, TWO RULE SETS

Rule 506(b) *Quiet*	Rule 506(c) *Public*
No general solicitation	Advertising permitted
Up to 35 non-accredited	Accredited investors only
Self-certification OK	Must verify each one
Relationship-driven	Open outreach

Source: Richey May · Procopio

MISTAKE NO. 3 · ACCREDITED VERIFICATION

Trusting the investor checkbox under 506(c)

03

THE MISSTEP

In a 506(c) raise you must take reasonable steps to verify accredited status — a self-checked box is not enough. Good news: a March 2025 SEC no-action letter created a cleaner path for high-minimum offerings.

PLAIN-ENGLISH EXAMPLE

A fund advertises on LinkedIn (fine under 506(c)) but onboards investors who simply tick "I am accredited." That is the 506(b) standard, not 506(c). Without reasonable verification steps, the exemption is unreliable — even if every investor truly is accredited.

HOW TO STAY CLEAN

- Verify, don't assume: income/asset evidence or a CPA/attorney/broker letter.
- New 2025 path: a high minimum ($200K individuals / $1M entities) plus written reps and no contrary knowledge can satisfy "reasonable steps."
- Document the verification file for every investor.
- Keep that file with your Form D record.

TWO WAYS TO VERIFY

Traditional steps	High-minimum path
Review W-2s / tax returns	$200K individuals / $1M entities
Bank & brokerage statements	Written investor reps
Or a CPA / attorney letter	No contrary knowledge

New March 2025 staff path → lighter documentation

Source: Kirkland & Ellis · SEC No-Action Letter

MISTAKE NO. 4 · FINDERS & COMMISSIONS

Paying "the friend who wants a cut"

04

THE MISSTEP

Pay someone a commission or success fee for bringing in investors and you have likely hired an unregistered broker. The SEC reaffirmed in 2025 that transaction-based pay is the classic hallmark of broker-dealer status.

PLAIN-ENGLISH EXAMPLE

A well-connected friend says: "Introduce you to my network — just give me 5% of whatever they invest." That success fee is transaction-based compensation. Unless the friend is a registered broker-dealer, both of you may be exposed, and investors may gain rescission rights.

HOW TO STAY CLEAN

- No transaction-based pay to anyone who isn't a registered broker-dealer.
- Flat fees for genuine, non-sales services are safer than success fees — confirm first.
- Run paid solicitors through a Rule 506(d) bad-actor check before they touch the raise.
- Paper the relationship; "everyone does it" is not a defense.

RED FLAGS: FINDER OR BROKER?

- ⚠ Paid a % or success fee on what investors put in
- ⚠ Actively solicits or pitches investors
- ⚠ Negotiates the deal terms
- ⚠ Handles investor funds or securities
- ⚠ Not a registered broker-dealer

Source: Wilson Sonsini · ArentFox Schiff

More boxes checked → more likely an unregistered broker

MISTAKE NO. 5 · FILINGS & DILIGENCE

Treating Form D as an afterthought

05

THE MISSTEP

Form D is due within 15 days of the first sale — the date the first investor is irrevocably committed. Founders miss the deadline, mis-state the minimum investment, or skip state "blue sky" notices entirely.

> **PLAIN-ENGLISH EXAMPLE**
>
> *A founder closes a lead investor in January and plans to "file the paperwork once the round wraps" in the spring. The 15-day clock started at that first close. The late filing can jeopardize the ability to rely on Reg D in future raises — even though the exemption itself survives.*

HOW TO STAY CLEAN

- Calendar the 15-day clock from the first irrevocable commitment, not the final close.
- State the minimum investment correctly — include all amounts an investor must pay.
- File state notice filings and consents to service where investors reside.
- Amend Form D when triggering facts change; keep the offering record current.

THE FORM D CLOCK

First sale
First investor irrevocably committed — the clock starts

Day 15
Federal Form D due with the SEC (EDGAR)

State notices
Blue-sky filings & consent to service where investors reside

As facts change
Amend Form D; keep the offering record current

Source: SEC Form D FAQ · Robinson Bradshaw

The five takeaways

01 **Don't advertise a 506(b) raise.**
One public post can cost you the exemption.

02 **Choose the lane on purpose.**
506(b) is quiet; 506(c) is public but verified.

03 **Verify — don't trust the checkbox.**
New high-minimum path eases 506(c) verification.

04 **No commissions to unregistered finders.**
Transaction-based pay signals broker status.

05 **File Form D on time, file it right.**
15 days from first sale; mind the state notices.

When in doubt, **pause and call counsel** before — not after — the raise goes live. Each of these is far cheaper to prevent than to unwind.

Questions?

We help founders structure private offerings that hold up — before the first dollar comes in.

SP Legal Advisors PLLC
Counselors at Law · Est. 2020
Principal Office: 320 Old Country Road, Suite 103, Garden City, NY 11530
(929) 244-0742 · (970) 710-1728 · advisors@sp-firm.com · sp-firm.com