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CAPITAL MARKETS · COMMUNICATIONS PRACTICE NOTE

When the CEO Wants to Go on a Podcast

Executive Communications Guidance for Sponsors with a Live or Imminent Reg D Offering

BY **SHAHRAM M. SIDDIQUI, ESQ.** *Member, SP Legal Advisors PLLC*

A founder gets a flattering invitation. A long-form podcast — capital allocators, family-office formation, real estate, alts. Sixty to ninety minutes, friendly host, sophisticated audience, no scripted Q&A. The communications team is excited. Investor relations is excited. Marketing has already drafted the social clips.

Then someone in the room asks the only question that matters: *we have a Regulation D offering in the market — what is the executive allowed to say?*

The honest answer is that what the executive says on air is governed by the same federal securities laws that govern the offering memorandum, the subscription agreement, and the marketing deck. The podcast is not a press appearance. It is an offering-related communication. The rules differ — meaningfully — depending on which Reg D exemption is in effect, whether the offering is distributed directly or through a broker-dealer or a registered investment adviser, and whether any affiliate of the issuer is itself a reporting company or an RIA.

This note is plain-English guidance for the C-suite executive who is about to sit down for an interview. It is built around the two Reg D exemptions sponsors actually use — Rule 506(b) and Rule 506(c) — and the practical rules that flow from each.

Why the Exemption Choice Changes Everything

Regulation D contains two operating private-placement exemptions for syndicated real estate and alternative offerings. **Rule 506(b)** permits up to 35 non-accredited (but sophisticated) investors and unlimited accredited investors — but **prohibits general solicitation and general advertising**. Investors must be brought into the offering through a pre-existing substantive relationship. **Rule 506(c)**, adopted under the JOBS Act, permits general solicitation but requires that *every* purchaser be an accredited investor whose status the issuer has taken reasonable steps to verify.

A public podcast is, by every reasonable measure, general solicitation. An open audience, indexed by Apple and Spotify, with social clips designed for distribution, is the paradigm case the SEC had in mind when it drafted Rule 502(c). That single fact — *a podcast is general solicitation* — drives different consequences depending on the exemption in use.

The 506(b) Playbook — Silence Is the Rule

If the issuer is conducting a 506(b) offering, the executive on the podcast should not **reference the offering at all**. No mention of the fund, the deal, the terms, the targeted size, the property, or the expected returns. No invitation to invest. No reference to the website where the offering documents are located. The reason is unforgiving: general solicitation destroys the 506(b) exemption. There is no cure. The deal becomes an unregistered, non-exempt sale of securities, exposed to Section 5 liability and investor rescission rights.

What *can* the executive talk about? The same things the executive could discuss at any industry conference: personal biography, how the firm was built, lessons learned across cycles, views on the macroeconomic environment, the asset class generally, and the executive's philosophy. What the executive cannot do is connect any of that commentary to a specific live offering.

Two practical points. First, the integration framework in Rule 152 treats offerings as a series — speaking too generally about "our deals" or "our typical structure" can create integration risk that would swallow the 506(b) offering into a contemporaneous solicited offering. Second, a podcast invitation that comes in *after* a 506(b) offering has launched is rarely worth the risk. Counsel can sometimes find a path; more often, the right answer is to decline the appearance until the offering has closed.

The 506(c) Playbook — Yes, You Can Speak — But…

A 506(c) offering removes the prohibition on general solicitation, but it does not relax the anti-fraud rules. Section 17(a) of the Securities Act and Rule 10b-5 of the Exchange Act continue to apply to every word the executive utters. Two operating rules follow.

First, **every statement on the podcast must be consistent with the offering materials**. The PPM, the subscription agreement, and the marketing deck define the universe of statements an executive can make about the offering. An on-air statement that goes beyond, contradicts, or provides "color commentary" on the offering documents is a live anti-fraud exposure even though general solicitation itself is permitted.

Second, **every ultimate investor must still be verified as an accredited investor**. The podcast audience is not pre-screened. The executive's job on air is to route any interested listener to the issuer's subscription process — never to ask a listener to act on what they have just heard. Rule 506(c)(2)(ii) verification (income, net worth, or a third-party letter) happens off-air, before any subscription is accepted.

A 506(c) issuer should also **archive the episode as marketing material** for the offering. The SEC's position on 506(c) communications is that they are part of the offering's public record. Recordings, transcripts, clips, and show notes should be retained and reviewed for consistency with the offering materials.

FIGURE 1 — THE EXECUTIVE'S PLAIN-ENGLISH COMPLIANCE CHEAT SHEET

When the Offering Runs Through a Broker-Dealer or RIA

A direct-from-issuer offering is the simpler case. Most syndicated offerings of any size are distributed in whole or in part through a placement agent, an introducing broker-dealer, or a registered investment adviser channel — and that distribution structure layers additional rules onto the executive's podcast.

- **FINRA Rule 2210.** Communications by associated persons of a member firm are subject to content, supervisory, and recordkeeping requirements. Where the BD has signed off on the offering and the executive is "associated" with the firm by virtue of officer or registered-rep status, any statement the executive makes about the offering may be deemed a firm communication. The BD's compliance team must pre-approve.
- **Marketing Rule 206(4)-1.** If any affiliate of the issuer is an SEC-registered investment adviser, podcast statements that function as advertisements — performance figures, testimonials, endorsements, hypotheticals, case studies — are governed by the Marketing Rule. The Rule requires balanced presentation, specific disclosures, and (for compensated endorsements) written agreements and disclosure language that cannot realistically be delivered on air. The safe default is to keep performance off the microphone.
- **Attribution and integration.** A statement made by the issuer's executive can be attributed back to the BD or RIA distributing the offering. Where the BD has filed a Form CRS or the RIA has filed a Form ADV describing the offering, inconsistent on-air statements can constitute disclosure-document errors. Coordinate the podcast appearance with the distribution partners before recording — not after.

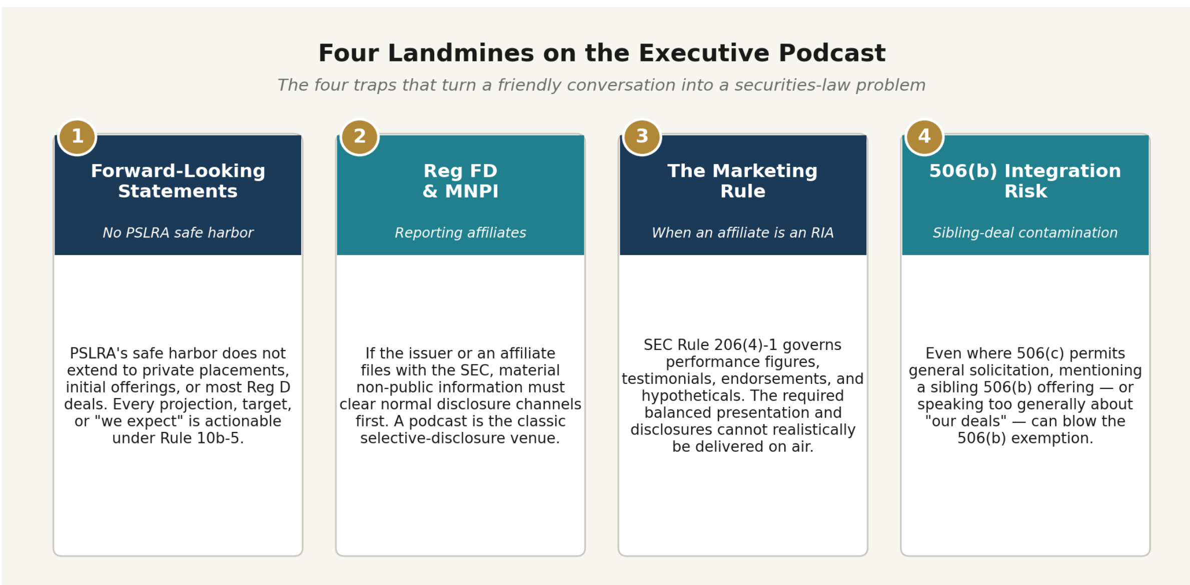

FIGURE 2 — THE FOUR TRAPS THAT TURN A FRIENDLY CONVERSATION INTO A SECURITIES-LAW PROBLEM

Before the Microphone Goes On

A short pre-recording protocol prevents most of the problems that arise afterward.

- **Pre-clear topics with counsel.** Ask the host for a list of questions — or themes — and route them to the GC or outside counsel. If the host won't share questions, that is itself a signal worth respecting.
- **Lock in clip approval in writing.** Out-of-context social clips are the single highest-risk artifact of any podcast appearance. A short side-letter with the host — clip approval rights for anything that names the executive in an investment context — costs nothing and protects everything.

- **Brief the executive on the market.** The executive should walk in knowing every Reg D offering the firm has live, the exemption claimed, the distribution channel, and the timing window. Surprises are the enemy.
- **Have a "safe answer" ready.** "Let me come back to you on that — that crosses into territory I want to be careful about" is a perfectly professional answer, and any sophisticated host will respect it.
- **Archive the episode.** Recording, transcript, social clips, and show notes. For 506(c) offerings, retain these as offering communications.

PHRASES TO MEMORIZE

- **On any offering-specific question:** — "For anything investment-specific, the offering documents and our IR team are the right source."
- **On returns, targets, or projections:** — "I don't talk about returns, targets, or projections in public forums."
- **On forward-looking commentary:** — "Those are my personal views on the market, not a forecast and not investment advice."
- **On material non-public information:** — "I can't get ahead of our public filings on that — anything material will come out through the usual channels."
- **When in doubt:** — "Let me come back to you on that after I check with my team."

A Note on Registered Offerings

Everything in this note assumes a Reg D private placement. The analysis is materially different when the issuer is in the middle of, or about to launch, a registered offering — an S-1 IPO, an S-11 non-traded REIT, a Form 1-A Regulation A+ offering, or any other Section 5 registered transaction.

Registered offerings impose **gun-jumping** restrictions during the pre-filing period, **waiting-period** constraints between filing and effectiveness, and **quiet-period** expectations that significantly narrow what an executive can say in public. Statements outside the prospectus during these periods can constitute prohibited offers, free-writing prospectuses, or — at the extreme — Section 5 violations that require a delay of the offering or a refresh of the registration statement. Communications protocols, free-writing prospectus mechanics, and Rule 163A/Rule 168/Rule 169 exclusions are technical and unforgiving.

If you are reading this note while in or near a registered offering, **stop and engage qualified SEC counsel** before the appearance is confirmed. The Reg D framework in the rest of this note is not the right map for that territory.

Bottom Line

A podcast is not a press appearance. It is an offering-related communication, and the federal securities laws follow the executive into the booth. A 506(b) offering wants silence; a 506(c) offering wants discipline; a registered offering wants different counsel entirely. The discipline of treating every appearance as a public, on-the-record offering statement — clip-approved, counsel-cleared, consistent with the offering materials — is what separates a useful brand-building moment from a regulatory file the executive does not want to open.

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FOR FURTHER INFORMATION

Shahram M. Siddiqui, Esq.
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