

RESEARCH SUMMARY

Evidence on the Use of Disclosure Documents in Private Securities Offerings to Accredited Investors

Adequate and truthful disclosure about a company selling securities is the bedrock of US securities laws, but a major anomaly exists. When securities are sold to accredited investors in private offerings under Rule 506 of the Securities and Exchange Commission's (SEC's) Regulation D, companies are not required to disclose any information. Accredited investors are a type of buyer seen by the SEC as financially sophisticated enough to make sound investment decisions without the protection of mandatory disclosure. Anecdotal information suggests that companies do usually provide some disclosure to accredited investors, but little research exists on whether companies provide disclosure and, if so, in what circumstances and to what extent.

To answer these questions, Andrew N. Vollmer surveyed lawyers with extensive practices representing clients in private offerings sold only to accredited investors. In "[Evidence on the Use of Disclosure Documents in Private Securities Offerings to Accredited Investors](#)," he reports the findings of the survey, which showed that companies nearly always provide some form of disclosure to accredited investors despite having no legal mandate to do so.

SURVEY FINDINGS: DISCLOSURE MAY NOT BE MANDATED, BUT IT IS COMMON PRACTICE

Eleven lawyers participated in the survey. They worked on approximately 3,500 securities sales to accredited investors over the past five years, ranging in scale from \$100,000 to several hundred million dollars. Most served as attorneys for the issuer (as opposed to the investor). Specifically, the survey found the following:

- The level of disclosure ranged from investors performing due diligence on founders or corporate records to issuers providing a disclosure document resembling a prospectus for a registered offer.
- Sales to less sophisticated accredited investors and transactions with a financial intermediary had the most extensive disclosure, often resembling a prospectus.
- Venture capital buyers usually received the least disclosure; they often did not receive a disclosure document but instead received representations in a stock purchase agreement.
- When buyers were not venture capital firms or professional investors, the amount of disclosure depended on the size of the offering and the amount of legal and accounting fees the issuer was able to spend on disclosure preparation.
- Startup companies prioritized disclosing risk factors and use of proceeds.
- Several respondents said that "natural persons" were present in all or a high percentage of their accredited investor transactions.
- Costs and time to prepare the disclosure rose with greater risk, complexity, or the size of the offering.

KEY TAKEAWAY

Though securities sold to accredited investors under Rule 506 do not require companies to disclose any information, a recent survey of experienced practitioners found that they nearly always provide some type of disclosure in practice.