

Capital Raising in the U.S.: An Analysis of Unregistered Offerings Using the Regulation D Exemption, 2009-2012¹

An update of the February 2012 study²

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ABSTRACT

In 2012, we issued a report on capital raising in the U.S. through unregistered offerings, using information extracted from Form D filings received by the U.S. Securities and Exchange Commission since the beginning of 2009 through the first quarter of 2011. In this report we update our analysis through the end of 2012 and provide additional analysis on the types of issuers, investors, and financial intermediaries that participate in such offerings. As with our previous report, the results are intended to inform the Commission about the amount and nature of capital raised through unregistered offerings claiming a Regulation D exemption, and to provide some perspective on the state of competition and potential regulatory burden in capital markets. In particular, we compare the amount of capital raised in reliance on Regulation D to capital raised from registered and other unregistered offering methods. This information may be particularly useful in assessing the potential need for current or future rulemaking activity. This analysis is not intended to inform the Commission about compliance with or enforcement of federal securities laws.

¹ This study was prepared for Craig Lewis, Director of DERA and Chief Economist, and is a follow-up to a 2012 study by a similar name. The document was reviewed by Gerald Laporte and Karen Wiedemann, Division of Corporation Finance. Research assistance provided for by Ross Goetz. The U.S. Securities and Exchange Commission, as a matter of policy, disclaims responsibility for any private publication or statement of any of its employees. The views expressed herein are those of the authors and do not necessarily reflect the views of the Commission or of the authors' colleagues on the staff of the Commission.

² See http://www.sec.gov/info/smallbus/acsec/acsec103111_analysis-reg-d-offering.pdf

SUMMARY OF MAIN FINDINGS

- Capital raised through Regulation D offerings continues to be large – \$863 billion reported in 2011 and \$903 billion in 2012.
- Since 2009, hedge funds reported raising \$1.3 trillion through Regulation D offerings. Private equity funds reported \$489 billion; non-financial issuers³ reported \$354 billion. Foreign issuers account for 19% of the total amount sold.
- Since 1993, the number of Regulation D offerings is highly, positively correlated with market performance, suggesting that the health of the private market is closely tied to the health of the public market.
- Because there is no Form D closing filing requirement, the amount of capital raised through Regulation D offerings may be considerably larger than the amounts disclosed. Only 63% of capital sought since 2009 is reported as sold within 15 days of the first sale.
- Rule 506 accounts for 99% of amounts sold through Regulation D. More than two-thirds of non-fund issuers could have claimed a Rule 504 or 505 exemption based on offering size, indicating that issuers value the Blue Sky law preemption allowed under Rule 506.
- Consistent with the original intent of Regulation D to target the capital formation needs of small business, there have been more than 40,000 issuances by non-financial issuers since 2009 with a median offer size of less than \$2 million.
- Form D filings report that more than 234,000 investors participated in Regulation D offerings in 2012, of which 91,000 participated in offerings by non-financial issuers, more than double the number of investors participating in hedge fund offerings. Non-accredited investors were present in only 10% of Regulation D offerings.
- Only 13% of Regulation D offerings since 2009 report using a financial intermediary (broker-dealer or finder). The real estate issuers use intermediaries the most (27% of offerings), while hedge funds use them the least (6% of offerings).
- When an intermediary is used, commissions or fees are 6% of the offering, on average, for offerings under \$1 million. The rate monotonically declines to less than 2% for offerings greater than \$50 million.

³ All issuers that are not pooled investment funds and that are not in the following Form D listed industries: commercial banking, Insurance, Investing, investment banking, and other banking& financial services.

I. The size of the Regulation D market

In our 2012 report on capital raising through unregistered offerings, we documented that the total amount sold through the Regulation D market was large during calendar years 2009 and 2010, a finding consistent with prior reports on the analysis of Regulation D filings by the Office of Inspector General (OIG).⁴ Our updated analysis of issuer self-reported data through electronic Form D filings in Table 1 reveals that the number of unregistered offerings and corresponding amounts raised continue to be large through the end of 2012, although the peak capital raising year remains 2010.⁵

Table 1. Capital raised through Regulation D and Regulation D/A (amended) offerings*

Year	Regulation D filings (number)	Regulation D/A filings (number)	Total amount sold (\$ Billions)	Mean amount sold (\$ millions)	Median amount sold* (\$ millions)
2009	13,764	7,077	595	36	1.5
2010	17,581	11,864	1,025	26	1.4
2011	18,174	12,536	863	28	1.5
2012	18,187	13,284	903	27	1.5

*Mean and median amount sold based on initial (new) Form D filings only. Total amount sold includes additional amounts raised and reported in amended filings, recorded at the time of the amendment.

These estimates are based on the “total amount sold” at the time of the original filing – required within 15 days of the first sale – as well as any additional capital raised and reported in amended filings. These estimates likely underreport the actual amount sold due to several factors. First, because electronic filings were phased-in through the end of March 2009, paper filings in 2009 are not captured in the analysis. Underreporting could occur in all years because Regulation D filings can be made prior to the completion of the offering, and amendments to reflect additional amounts sold generally are not required if the offering is completed within a year and the amount sold does not exceed the original offering size by more than 10%. Finally, while Rule 503 requires the filing of a notice on Form D of all offerings under Regulation D, during the sample period filing a Form D is not a condition to claiming a Regulation D safe harbor or exemption, and it is possible that some issuers do not file Form Ds for offerings intended to be eligible for relief under Regulation D.⁶

⁴ The 2004 OIG report, *Small Business Regulation D Exemption Process*, Report No. 371, documents that the Commission recorded unregistered offerings of \$1.2 trillion between January 2000 and March 2001. The 2008 OIG audit of the Commission’s Regulation D Exemption Process, *Regulation D Exemption Process*, Report No. 459, issued on March 31, 2009 estimated unregistered offerings of \$609 billion during 2008 based on a sample of 323 electronic form D filings made between September 15, 2008 and December 31, 2008.

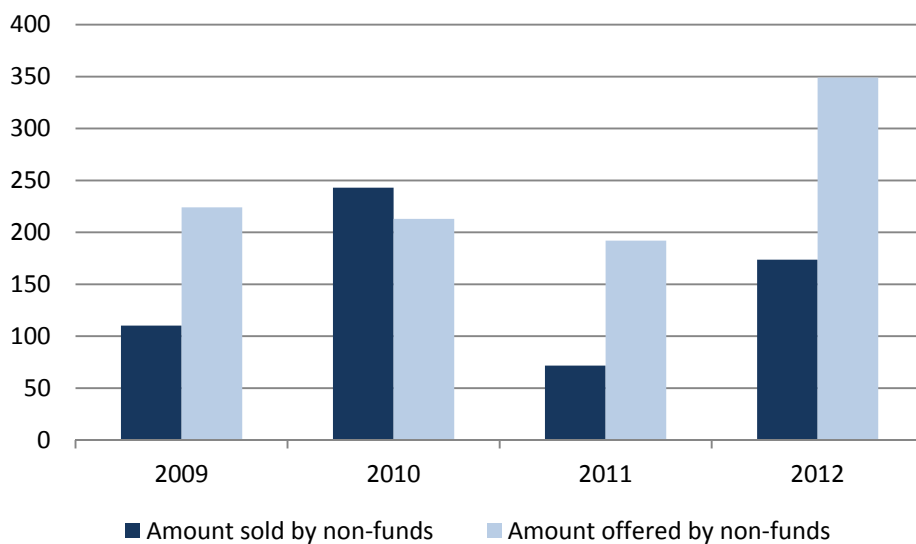
⁵ We revised upwards the numbers reported in our previous report for 2009 (\$587 billion) and 2010 (\$906 billion). The revision is due to our more accurate accounting for amounts from amended Form D filings. See Appendix for details on the methodology used to collect and analyze the Form D information in this report.

⁶ Separate analysis by DERA staff of Form D filings by funds advised by registered investment advisers and broker-dealer members of FINRA suggests that Form D filings are not made for as much as 10% of unregistered offerings eligible for relief under Regulation D.

Although the aggregate amount of capital raised through Regulation D offerings is large, the average offering size is modest, on the order of \$30 million in each year. The median offering size is significantly lower, around \$1.5 million in each year, indicating a large number of small offerings, consistent with the original regulatory objective to target the capital formation needs of small business.⁷ The summary statistics in Table 1 also indicate that a large fraction of offerings are amendments to previously filed offerings, mostly attributed to the continuation of private fund offerings discussed in more detail below. Underscoring the importance of the Regulation D market as a source of capital to smaller firms, a significant number of issuers have relied on this market over the last four years. There were 49,740 unique issuers of new Regulation D offerings over the four years under consideration. This number increases to 56,968 with the inclusion of ongoing (amended) offerings.

While these estimates do not reflect the actual amount sold, we estimate in Figure 1 an upper bound for issuers reporting on Form D based on their reported “total offering amount,” which for non-fund issuers represent the amount of capital sought at the time of the filing. This is the statistic used in the OIG reports and the only statistic available on non-electronic Form D filings prior to 2008.⁸ The statistic is less relevant for fund issuers that seek an indefinite amount of capital.

Figure 1. Total amounts offered and sold by non-funds



⁷ The Commission stated in the Regulation D adopting release that an important purpose of the Form D filing requirement was “to collect empirical data which will provide a basis for further action by the Commission either in terms of amending existing rules and regulations or proposing new ones. Further, the proposed Form would allow the Commission to elicit information necessary in assessing the effectiveness of Regulation D as a capital raising device for small businesses.” Release No. 33-6389 (Mar. 8, 1982) [47 FR 11251] (adopting Form D as a replacement for Forms 4(6), 146, 240 and 242).

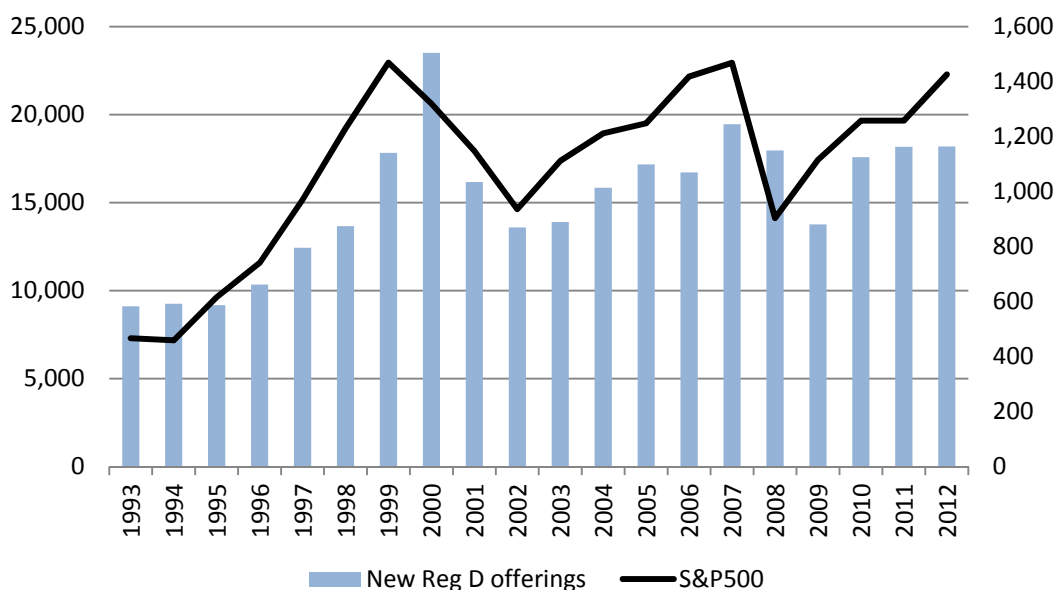
⁸ See Electronic Filing and Revision of Form D, Release No. 33-8891 (Feb. 6, 2008) [73 FR 10592].

Figure 1 reports the amount sold for non-funds, and the additional amount sought but not sold at the time of the original filing. We exclude new original filings that indicate zero amounts sold at the time of the filing and do not subsequently report any amount sold. For the years 2009 through 2012, 63% of the total capital sought by non-funds was reported as sold. However, because offerings may not be fully subscribed, the total offering amount is best viewed as an upper bound of total capital raised among those issuers that report on Form D.

a. Cyclicity

Figure 2 presents a more comprehensive time series of Regulation D offering activity based on the number of offerings by calendar year starting in 1993. These numbers correspond to all new (non-amended) Form D filings on the EDGAR filing system. While these numbers do not indicate the aggregate amount raised through these offerings, Table 1 suggests that offering sizes over the most recent four years are fairly constant, suggesting that year-to-year changes in the number of offerings are likely to also track changes in the amounts sold.

Figure 2. Number of Regulation D offerings, 1993-2012



The trend shows that 2009 was an abnormally low year, consistent with the onset of the financial crisis. More broadly, there is a strong, positive correlation with the economic condition of the public market. In particular, the level of Regulation D offering activity closely follows the level of the S&P 500 index. There were peaks in the number of Regulation D offerings in 2000 and 2007, consistent with heightened stock market valuations. Hence, private offerings in the Regulation D market are pro-cyclical, suggesting that the health of the private capital market is closely tied to that of the public capital market. This result is inconsistent with the view that private capital markets step in during times of public market stress.

b. Prevalence of Rule 506

Most Regulation D offerings are issued under Rule 506, 94% since 2009 (Figure 3), which provides a safe harbor for the private offering exemption under Section 4(a)(2) of the Securities Act, and is one of three exemptive rules for limited and private offerings under Regulation D. Rule 506 offerings account for more than 99% of the reported capital raised through Regulation D offerings since 2009. The current Rule 506 permits sales of an unlimited dollar amount of securities to be made, without registration, to an unlimited number of accredited investors and up to 35 non-accredited investors, so long as there is no general solicitation, appropriate resale limitations are imposed, any applicable information requirements are satisfied and the other conditions of the rule are met.⁹ In addition, securities issued under Rule 506 are considered “covered securities” under Section 18 of the Securities Act, thus exempt from Blue Sky law registration. In contrast, alternative private offering exemptions Rules 504 and 505 offerings are limited to \$1 million and \$5 million respectively, and are subject to state Blue Sky registration laws.¹⁰ While Rule 505 limits the participation of non-accredited investors to 35 per offering, Rule 504 allows for unlimited number of non-accredited investors. Lastly, issuers relying on Rule 504 may, under certain circumstances, use general solicitation and also sell unrestricted securities.

Figure 3. Fraction of offerings and amount raised by Regulation D Exemption, 2009-2012



Table 2 shows that Rule 506 is the dominant offering method even among those offerings eligible for Rules 504 and 505. Almost 50% of all Rule 506 offerings by non-funds since 2009 were for \$1 million or less and therefore may have qualified for the Rule 504 exemption based on offering size, but issuers elected to claim the Rule 506 exemption. An additional 20% of offerings were for between \$1 million and \$5 million and therefore could have claimed a Rule 505 exemption based on offering size. This evidence suggests that the Blue Sky law preemption feature unique to Rule 506 offerings has greater value to issuers than the unique features of Rule 504 or Rule 505 offerings. With the adoption of rules under Title II of the JOBS Act that

⁹ See SEC Release No. 33-9211, page 4 and footnote 8.

¹⁰ See discussion of rules 504, 505, and 506 or Regulation D at <http://www.sec.gov/answers/regd.htm>

remove the ban on general solicitation and allow issuers to generally solicit and advertise to everyone in Rule 506 offerings sold only to accredited investors, there will be even greater incentive for issuers to use Rule 506.

Table 2. Number of offerings by non-fund issuers, by size and exemption claimed, 2009-2012*

	Offering size			
	< \$1 million	\$1-5 million	\$5-50 million	>\$50 million
Rule 504	1,997	--	--	--
Rule 505	705	229	--	--
Rule 506	19,424	11,957	8,103	1,268

*Considers only new offerings and excludes offerings with amount sold reported as \$0 on Form D.

c. Size relative to registered offerings

In our prior report, we report that the total capital raised annually through Regulation D offerings is large when compared to other common sources of capital, including:

- Public debt and equity (registered) offerings¹¹
- Rule 144A (resale of unregistered securities)¹²
- Regulation S (offshore component of 144A offerings)¹³
- Other Section 4(a)(2) private offerings¹⁴

Figure 4 illustrates that the amount of capital raised through Regulation D offerings remains large relative to other private offering exemptions and is comparable, but larger, than the amount of capital raised under Rule 144A¹⁵. Registered offerings (debt and equity combined) account for more capital formation than the Regulation D market alone, but not when all private offering methods are combined. In 2012, registered offerings accounted for \$1.2 trillion of new capital compared to \$1.7 trillion raised through all private offering channels. Moreover, for the reasons described earlier, the amount raised through private offerings is likely understated due to our inability observe all private capital activity.

¹¹ Data for registered debt and equity offerings from Thomson Financial's SDC Platinum.

¹² Data on non-ABS Rule 144A offerings collected from Thomson Financial SDC new Issues database and the Mergent database. Data on ABS Rule 144A offerings are collected from the Asset-Backed Alert and Commercial Mortgage Alert publications.

¹³ Data for Regulation S offerings collected from Thomson Financial's SDC Platinum service.

¹⁴ Data collected from Thomson Financial's SDC Platinum, which uses information from underwriters, issuer websites, and issuer SEC filings to compile its Private Issues database. These include offerings under Section 4(a)(2) of the Securities Act that do not claim a Regulation D or Reg S exemption and that are without a follow-on Rule 144A sale. These numbers are accurate only to the extent that SDC is able to collect such information, and may understate actual the amount of capital raised under Section 4(a)(2) if issuers and underwriters do not make this data available.

¹⁵ By its terms Rule 144A is available solely for resale transactions. However, market participants use it to facilitate capital-raising by issuers by means of a two-step process, in which the first step is a primary offering on an exempt basis to one or more financial intermediaries, and the second step is a resale to "qualified institutional buyers" in reliance on Rule 144A.

Figure 4. Aggregate capital raised in 2009-2012 by offering method (\$billions)

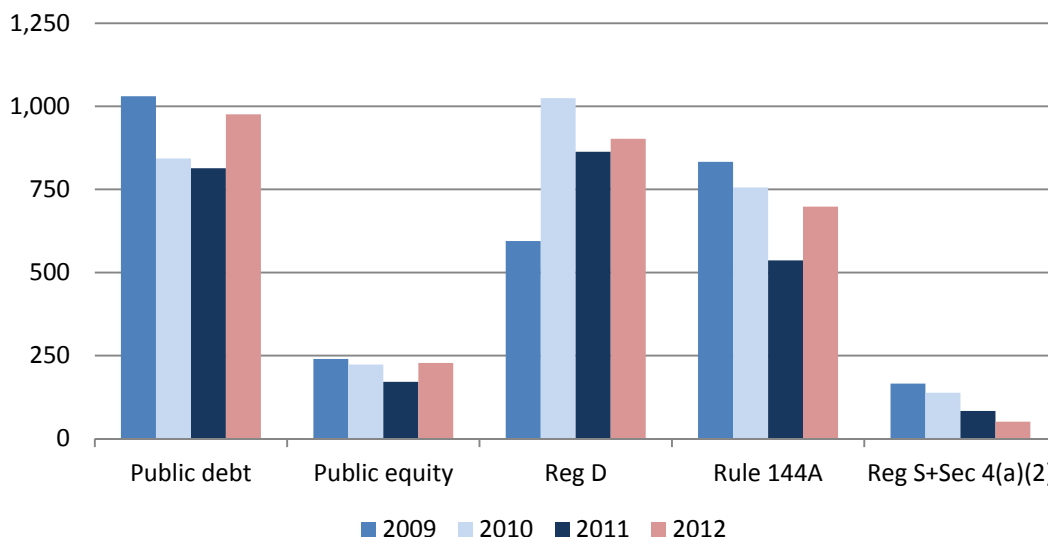


Table 2 shows that Regulation D offerings occur with far greater frequency than any other offering method surveyed. No other offering method has been used even a tenth as much during the same period, indicating that the accumulation of capital raised through Regulation D occurs by way of much smaller offering denominations than other methods, and is further evidence of it being a primary tool for smaller entities.

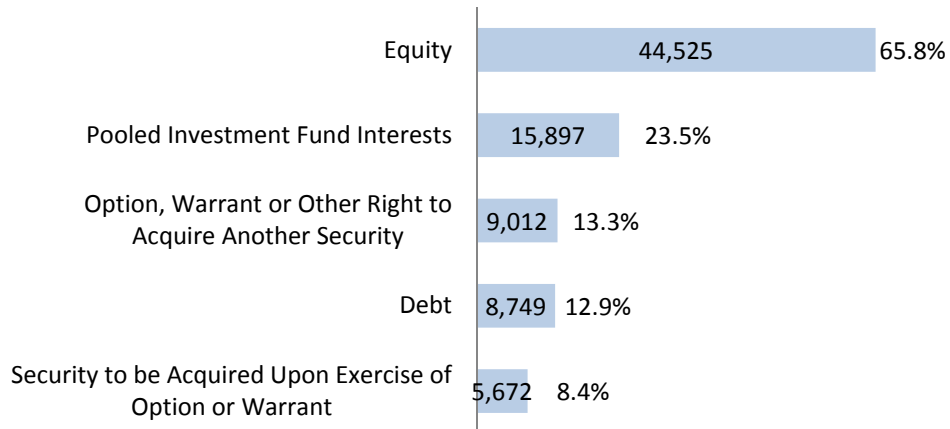
Table 2. Number of offerings by type of offering and year

Year	Regulation D	Public equity	Public debt	Rule 144A	Reg S	Other 4(a)(2)
2009	20,841	942	1,445	1,240	294	648
2010	29,445	1,072	1,930	1,607	262	668
2011	30,710	863	1,465	1,148	97	863
2012	31,471	954	1,473	1,302	13	518

The importance of the Regulation D market is magnified when considering that approximately two-thirds of Reg D offerings represent new equity capital (Figure 5), which is a more permanent source of capital than debt, and thus more likely to reflect new investment as opposed to the refinancing of existing investment. Put differently, to the extent that debt offerings are attributed to the “rolling over” of existing debt due to an expiring term or refinancing due to a change in interest rate environment, such transactions do not reflect the financing of new investment.¹⁶ In addition, a larger fraction of non-financial issuers rely on Reg D for raising capital compared to the Rule 144A market, where the vast majority of issuers are financial institutions and over 99% of securities are debt securities.

¹⁶ It is possible that equity issuances in Regulation D offerings reflect deleveraging – conversion of debt to equity, which may not reflect new investment.

Figure 5. Number and percent of Reg D offerings by type of security issued ¹⁷



Combined, the evidence from Form D filings suggests an active and vibrant market for private offerings compared to registered offerings, and is inconsistent with the view that there are significant frictions in the capital raising process that prevent issuers from funding investment through private offering channels.¹⁸ Moreover, the estimated amount of capital raised through Regulation D offerings in each year since 2009 is similar in magnitude to the estimated amount of capital raised in 2000 prior to start of the Sarbanes-Oxley regulatory environment (\$960 billion¹⁹). In this respect, and given the pace of Regulation D offerings from 2009 until 2012, there is no evidence that the Regulation D offering market has shrunk over this period.

II. Regulation D market participants

a. Issuers of securities under Regulation D

The largest issuers in the Regulation D by amount sold market are pooled investment funds, classified in the Form D filings as hedge funds, venture capital funds, private equity funds, and other pooled investment funds. The predominant entities among other pooled investment funds are registered investment companies and commodity pools.²⁰ Since the inception of the electronic Form D filings, beginning in 2009, pooled investment funds have

¹⁷ There are 83,855 issues referenced, which is greater than the total 67,688 new issues in Table 1. This is due to multiple securities listed in the same filing.

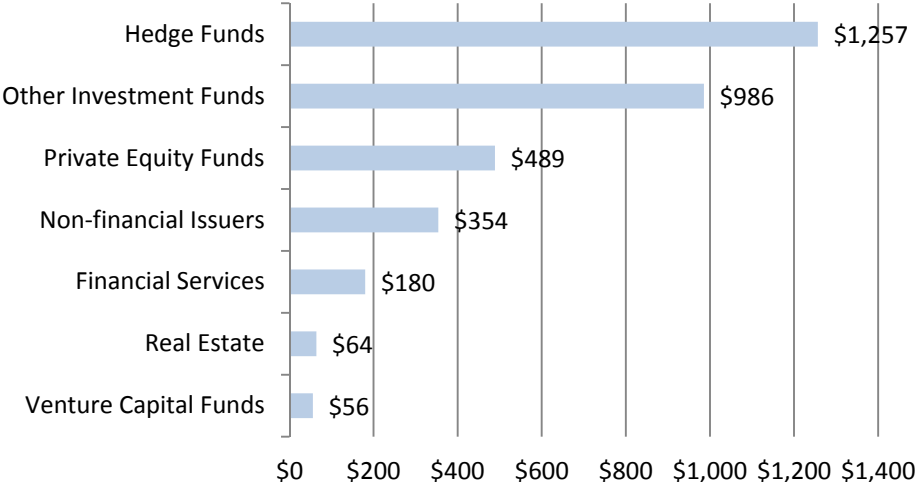
¹⁸ See e.g., Joseph McLaughlin, How the SEC Stifles Investment – and Speech, Wall Street Journal, February 3, 2011.

¹⁹ See footnote 4 and discussion in Section I.

²⁰ Registered investment companies are entities such as mutual funds that issue securities to investors, hold pools of securities and other assets and are registered with the Commission under the Investment Company Act. Commodity pools are investment trusts, syndicates, or similar enterprises that are operated for the purpose of trading commodity futures.

accounted \$2.8 trillion of new capital raised through Regulation D offerings and reported on Form D (Figure 6a), compared to \$623 billion raised by non-funds. Hedge funds are the largest fund issuer, accounting for \$1.26 trillion of new capital, of which \$386 billion was raised in 2012 (Table 3). Non-financial issuers, typically private companies, raised \$354 billion during the four-year period, of which \$91 billion was raised in 2012. Financial services, including banking and insurance, accounted for \$180 billion raised during the four-year period.

Figure 6a. Aggregate capital raised (amount sold) during the period 2009-2012 by issuer type (\$billions)



Although non-financial issuers raised substantially less than fund issuers in aggregate, they account for the majority (60%) of all new offerings and Form D filings (Figure 6b). Consistent with this, the median offering size for non-financial issuers is substantially lower than the median offering size for hedge funds. In 2012, the median amount sold by non-financial issuers was \$1.6 million compared to \$100 million for hedge funds, and \$50 million for private equity funds (Table 3). The differences in mean offering size are even larger. The amounts sold by non-fund issuers are substantially smaller than what they sought to raise in 2012 (about 49%), which suggests that either the amounts reported in Form D filings understate the full amount of capital raised in the market, or the offerings are generally undersubscribed.

Almost 99% of the capital raised under Regulation D in 2012 (\$898 billion) was by issuers relying on the Rule 506 exemption, of which pooled investment funds and non-financial issuers account for \$725 billion and \$173 billion respectively. This represents a significant increase for non-financial issuers compared to 2011 when they reported raising only \$71 billion under Rule 506. In the same year, pooled investment funds raised approximately \$778 billion.

Figure 6b. Number of initial (new) offerings during the period 2009-2012 by issuer type

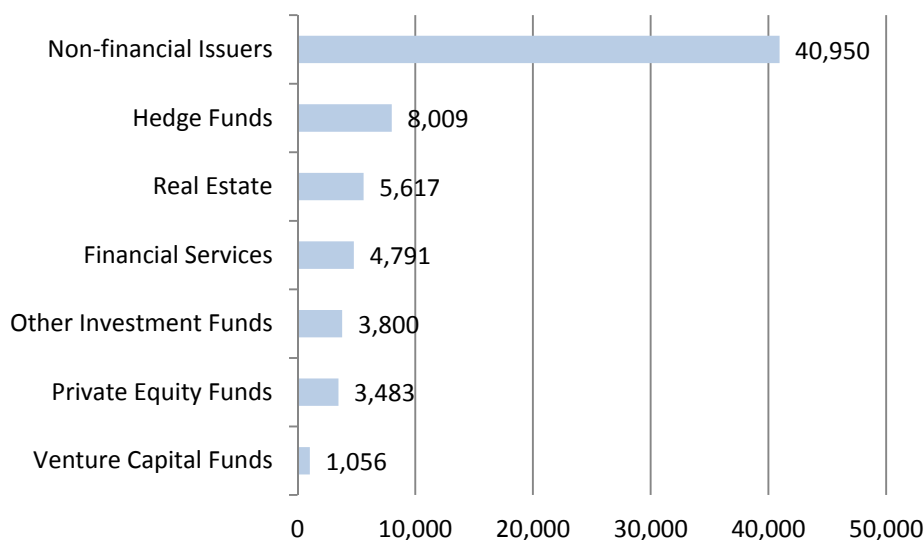


Table 3. Amounts sought and sold through Regulation D in calendar year 2012 by issuer type*

	Number of offerings	Amount sold (\$Billions)	Amount sold Rule 506 (\$Billions)	Amount sought (\$Billions)	Mean offer size (\$Millions)	Median offer size (\$Millions)
Hedge Funds	1,952	386	385	N/A	359	100
Private Equity Funds	1,083	159	159	N/A	307	50
Venture Capital Funds	365	19	19	N/A	89	15
Other Investment Funds	1,055	165	163	N/A	198	20
Financial Services	1,069	63	63	165	62	4
Real Estate	1,900	20	20	48	15	2.3
Non-financial Issuers	10,763	91	91	136	9	1.6

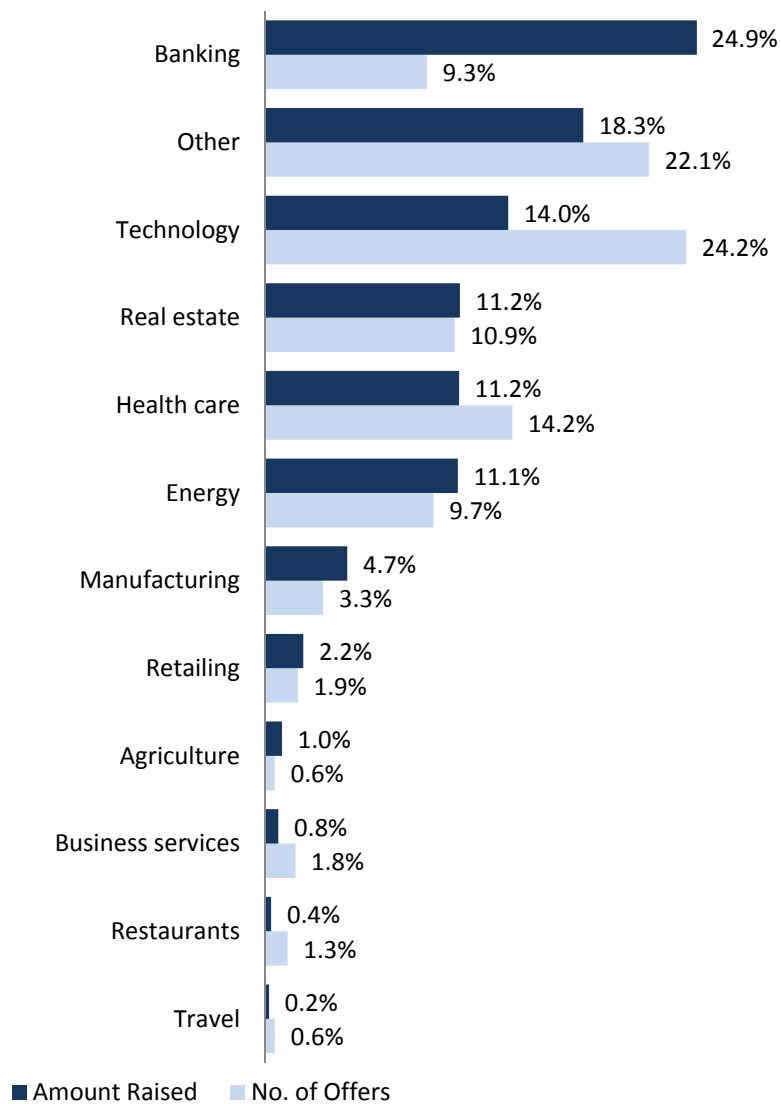
* Number of offerings includes only initial (new) Form D filings; amount sold includes capital raised and identified through both new and amended Form D filings; mean and median offer size are based on amount sold reported in initial (new) Form D filings only.

Among non-fund issuers, the largest industry group by dollar amount sold is Banking, followed by Technology, Health Care, Real Estate, and Energy (Figure 7). However, issuers from the Technology industry group are the most active, making 24% of all reported offerings. A large fraction of offerings (22%) do not specify an industry on Form D. Issuer revenue ranges reported in Figure 8 show that issuers of private offerings tend to be small. Although a significant number of issuers decline to disclose their revenues (55%), for those that do, most have revenues of less than \$1 million. Only 1.4% of all new offerings are by issuers that report more than \$100 million in revenues.²¹ By way of comparison, 50% of SEC reporting companies with publicly traded equity report revenues of greater than \$100 million at the end of 2011

²¹ Form D also contains information on net asset value (NAV) of hedge funds and other investment funds. Since 2009, more than three-quarters of issuers have declined to disclose NAV, but of those that do, a trend similar to revenue is reported – the largest set of issuers is in the smallest NAV categories.

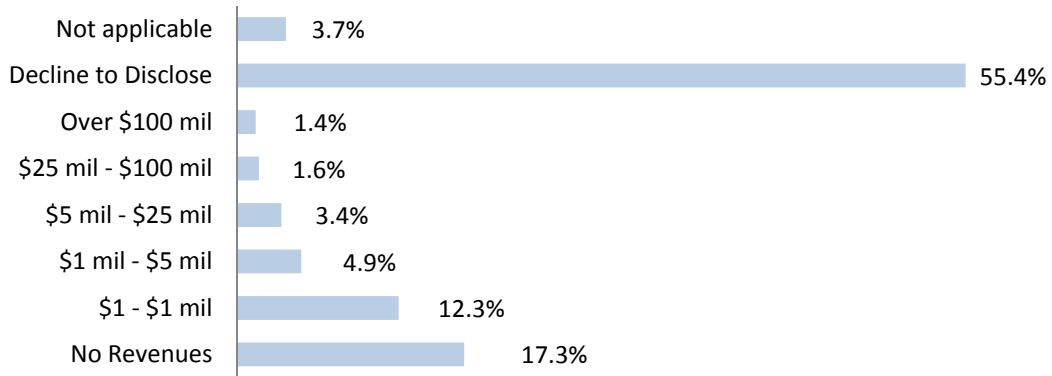
fiscal year²², evidence that issuers seeking capital through Regulation D offerings are significantly smaller than the average publicly traded company.

Figure 7. Most active non-fund issuers by amount sold (2009 -2012)



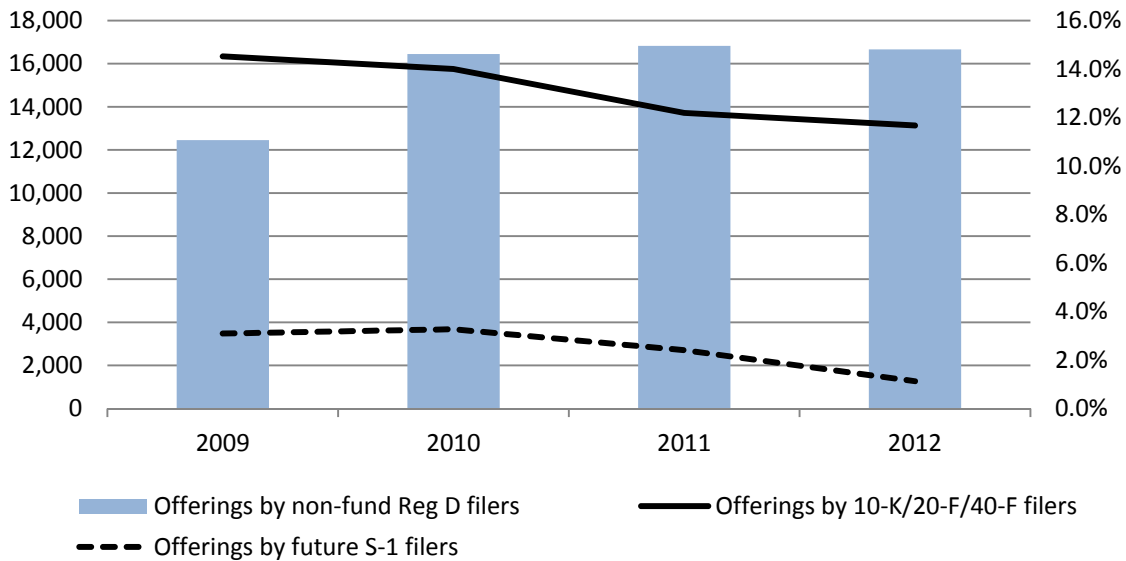
²² Calculated based on an DERA analysis of 6,760 SEC registrants in who had a class of equity security with a reported market price reported by Standard and Poors' Compustat database at the end of fiscal year 2011.

Figure 8. Distribution of non-fund issuers by reported revenue (2009-2012)



Issuers that file periodic reports with the Commission under the Securities Exchange Act of 1934 often conduct private offerings. Figure 9 reports the number of offerings conducted by non-fund issuers (left axis), and the fraction of those offerings conducted by SEC reporting companies²³ or by issuers that subsequently initiate reporting with the Commission by filing an S-1 registration (right axis). Over the four-year analysis period, 13% of Regulation D non-fund offerings were by SEC reporting companies. In addition, about 2.5% of non-fund offerings were by issuers that subsequently registered an offering with the Commission on Form S-1. For these issuers, a Regulation D offering was a precursor to going public.

Figure 9. Offerings by non-fund Regulation D issuers, and the fraction that are made by SEC reporting companies or issuers that subsequently register an offering with the Commission



²³ We identified reporting companies as those that filed on Forms 10-K, 20-F, or 40-F during the analysis period.

b. Investors in Regulation D offerings

Regulation D allows both accredited and non-accredited investors to participate in private offerings, with the number of non-accredited investors limited to maximum of 35 for Rule 505 and Rule 506 offerings.²⁴ Based on information collected from Form D filings, most participants are accredited. For example, in 2012, only 10% of new offerings include non-accredited investors (Table 4). Offerings by financial issuers and REITs are more likely to have non-accredited investors (14% of offerings have at least one such investor), while offerings by VC funds only rarely include non-accredited investors (0.6% of offerings have at least one such investor). Although Rule 506 allows for the participation of non-accredited investors, they only participated in 11% of the Rule 506 offerings conducted between 2009 and 2012. Only 8% of the offerings by fund issuers included non-accredited investors, compared to 12% of the offerings by non-fund issuers.

Aggregated Form D information also reveals more than 234,000 investors participating in Regulation D offerings in 2012, of which more than 90,000 participated in offerings by non-financial issuers, triple the number of investors that participated in offerings by hedge funds. However, because an investor can participate in more than one Regulation D offering, this aggregation likely overstates the actual number of unique investors in the private offering market, and we have no method of estimating the effect. The mean number of investors per offering (13) is significantly larger than the median (4), indicating the presence of a small number of very large offerings. Offerings by pooled investment funds and REITs have the largest average number of investors (both accredited and non-accredited) per offering, while those by non-financial issuers have the smallest.

Table 4. Investors participating in Regulation D offerings in 2012

	Total number of investors	Mean investors per offering	Median investors per offering	Fraction of offerings with at least one non-accredited investor
Hedge Funds	29,646	15	3	7%
Private Equity Funds	19,374	18	5	5%
Venture Capital Funds	5,275	15	3	0.6%
Other Investment Funds	26,893	26	5	7%
Financial Services	15,591	15	5	14%
Real Estate	47,135	25	7	14%
Non-financial Issuers	90,758	8	4	10%
Total	234,672	13	4	10%

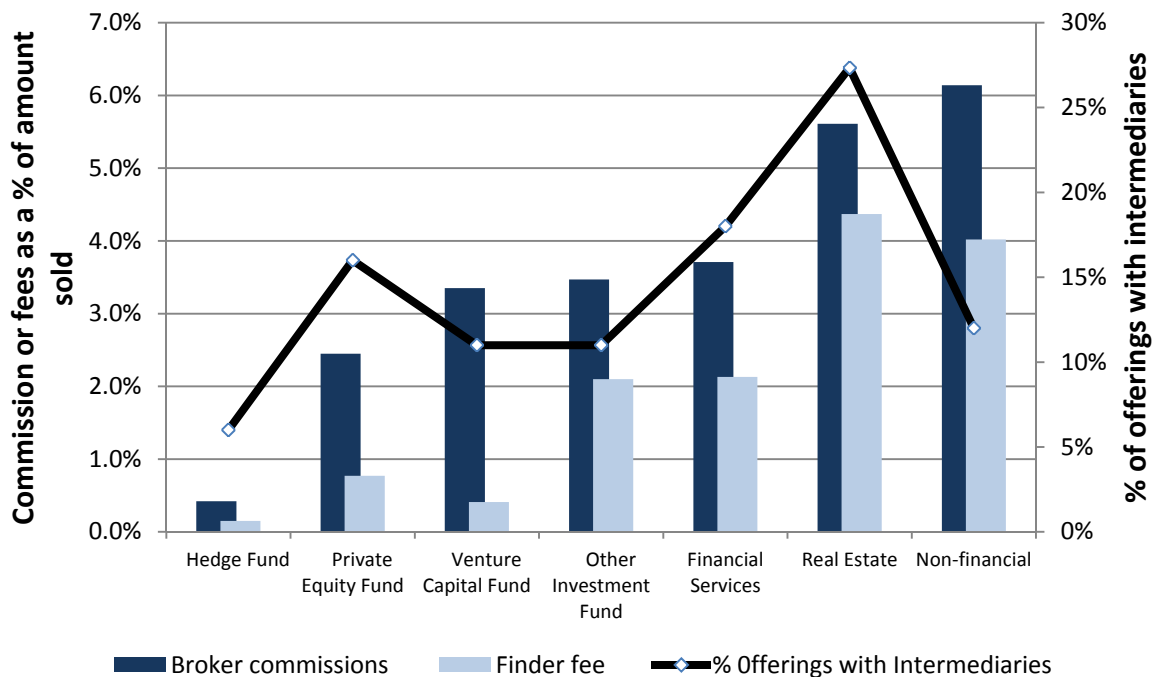
²⁴ In offerings under the new Rule 506(c) that permits the use of general solicitation, only accredited investors will be eligible to purchase securities.

III. The Role of Financial Intermediaries in the Regulation D market

While financial intermediaries commonly underwrite public offerings, there is relatively little information about intermediary participation in private offerings. One possible role for an intermediary in a private offering is to help issuers locate potential investors without violating the ban on general solicitation, a constraint of current Rule 506 offerings. Using a pre-existing and substantive relationship between the intermediary and potential investors is one method for the issuer to ensure rule compliance and preserve the Rule 506 safe harbor.

Information collected from Form D filings reveals that intermediaries are used relatively infrequently in the Regulation D market. Only 13% of all new offerings since 2009 use an intermediary such as a finder or broker-dealer (Figure 10). Approximately 11% of new offerings report sales commissions greater than zero, while approximately 3% report finder fees greater than zero. Issuers from the real estate industry are the biggest users of intermediaries (27% of all offerings) while hedge funds use intermediaries the least (6% of all offerings). Non-financial issuers rely on intermediaries in 12% of offerings. When an intermediary is used, most classes of issuers use between two and four intermediaries, although VCs that use intermediaries typically engage about 11 intermediaries per offering.

Figure 10. Use of financial intermediaries by type of Regulation D issuer, 2009-2012

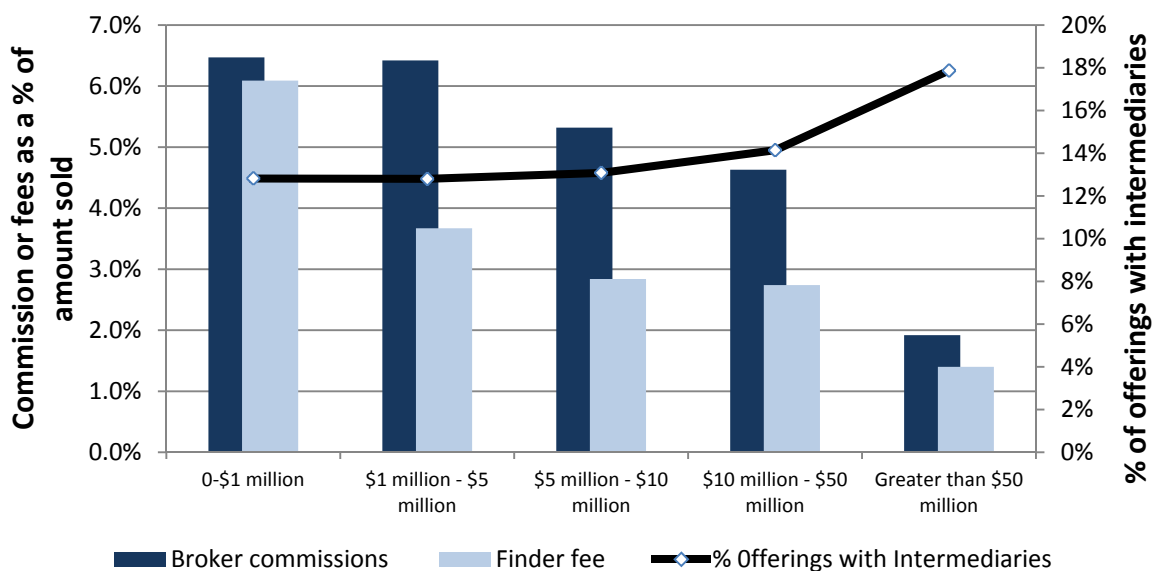


When a broker or finder is used, there is significant variation in commissions or fees across each class of issuer. Information from Form D filings reveals that commissions and finder fees are smallest for pooled investment funds and largest for non-financial issuers. Non-financial issuers pay on average about 6% commission in Regulation D offerings. For

comparison, a company going public pays an average gross spread of 7% to its IPO underwriters²⁵, while a public company raising equity through a follow-on (seasoned) equity offering pays a gross spread of about 5.4%.²⁶ Issuers raising capital through registered bond issues pay commissions between 0.9% and 1.5% of the size of the offering.²⁷ In contrast, hedge funds raising capital through Regulation D offerings pay on average 0.4% commission. Brokers and finders are no more costly, on average, than the underwriting fees charged for public offerings, so fees do not provide an obvious reason for their relatively infrequent use in unregistered offerings.

Figure 11 reports the use of financial intermediaries and fees for different offering sizes, irrespective of issuer type. The use of a broker or finder increases with offering size; they participate in 13% of offerings for up to \$1 million and 18% of offerings for more than \$50 million. Moreover, commissions and finder fees decrease with offering size. Unlike the gross spreads in registered offerings, the differences in commissions for Regulation D offerings of different sizes are large: the average commission paid by issuers doing offerings of up to \$1 million (6.5%) is almost three times larger than of the average commission paid by issuers doing offerings of more than \$50 million. These results are consistent with larger deals generating scale economies for the involved intermediaries. Even so, the vast majority of the offerings are conducted without the use of a financial intermediary.

Figure 11. Use of financial intermediaries by size of offering



²⁵ See Hsuan-Chi Chen and Jay Ritter, *The Seven Percent Solution*, *Journal of Finance* 55, 1105-1131 (2000).

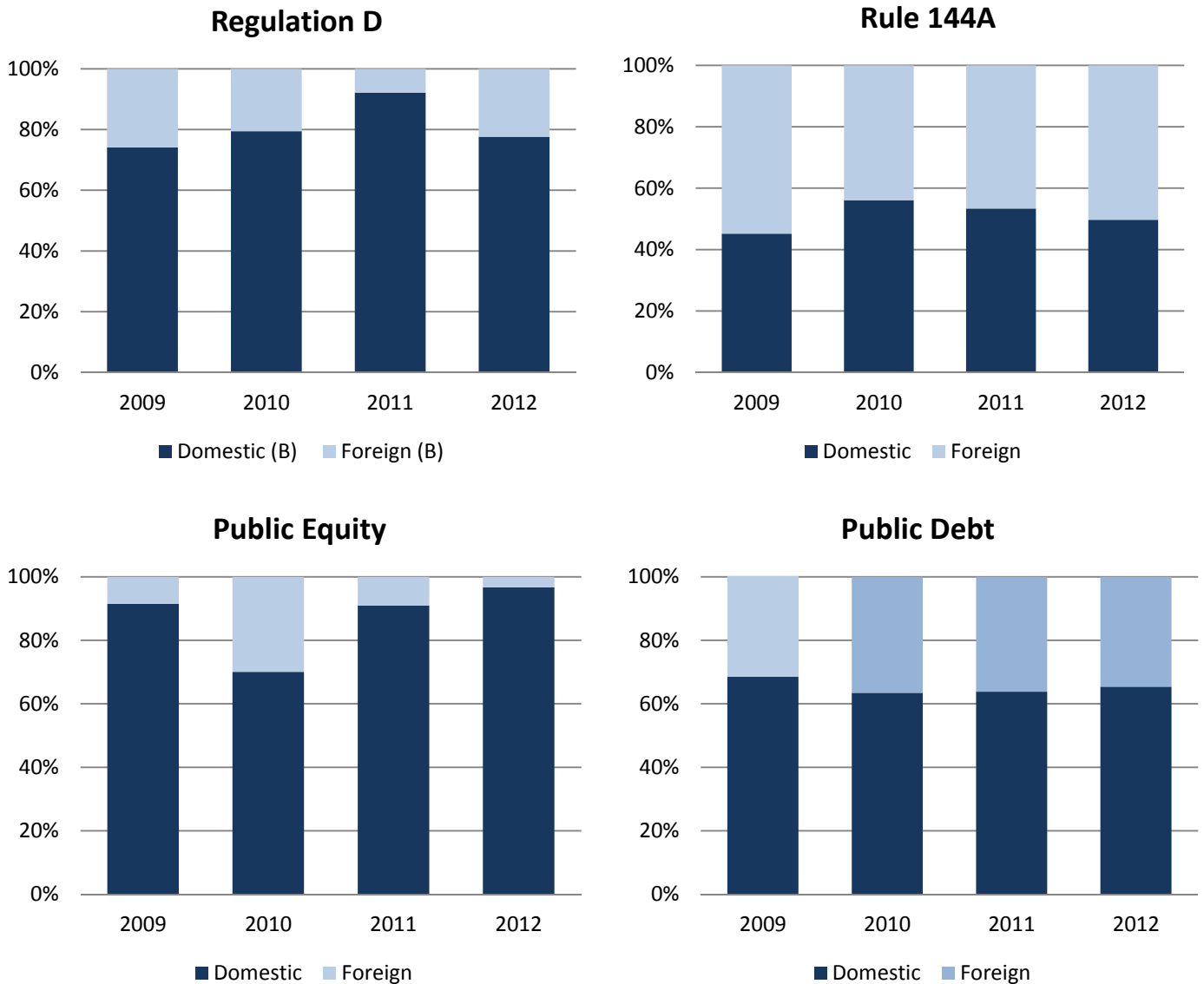
²⁶ See Shane Corwin, *The Determinants of Underpricing for Seasoned Equity Offers*, *Journal of Finance* 58, 2249-2279 (2000).

²⁷ See L. Fang, *Investment Bank Reputation and the Price and Quality of Underwriting Services*, *Journal of Finance* 60, 2729-2761 (2005).

IV. Statistics on capital raised by foreign and domestic issuers

Over the period from 2009 to 2012, foreign issuers account for approximately 19% of all capital raised by Regulation D offerings, although this fraction varies over time (Figure 12). Participation was lowest in 2011 and highest in 2009 (the height of the financial crisis). By comparison, foreign issuers account for 49% of capital raised via Rule 144A offerings, 35% of capital raised through public debt offerings, and only 13% of capital raised through public equity offerings.

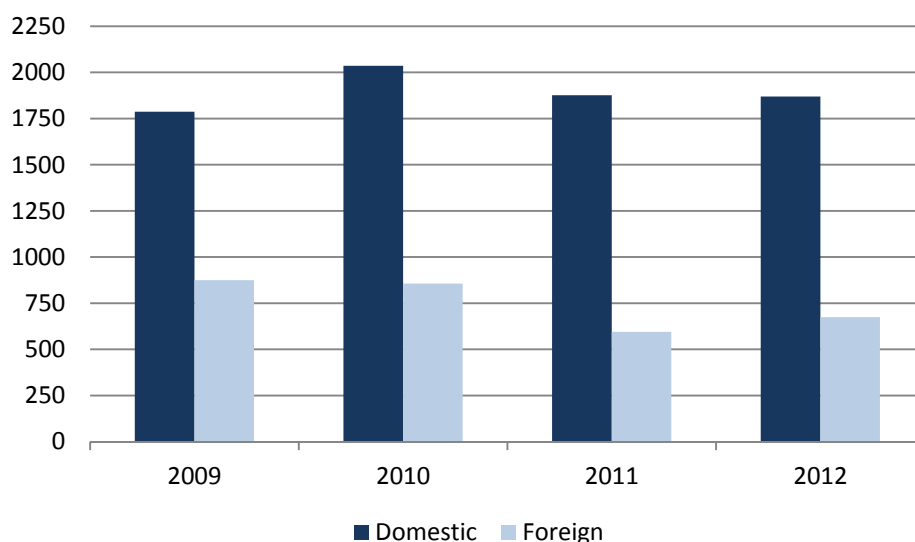
Figure 12. Percent of capital raised in U.S. by domestic and foreign issuers by offering method



When aggregated across types of offerings, U.S. issuers raised more than twice as much capital as foreign issuers in each calendar year since 2009 (Figure 13). During that period, the amount of capital raised by foreign issuers decreased 23%, from \$875 billion to \$674 billion,

while the amount of capital raised by domestic issuers increased 5%, from \$1.79 trillion to \$1.87 trillion.

Figure 13. Aggregate capital raised in the U.S. by domestic and foreign issuers (\$billions)



V. Regulation D offerings by public companies

Regulation D offerings are available to any potential issuer without regard to its SEC reporting status. Among issuers in Regulation D offerings, reporting companies are unique because they have previously registered securities with the Commission and are able to access both public and private capital markets. There are many reasons why a public firm would select a Regulation D offering (e.g., lower overall issuance cost, confidentiality issues, speed of issuance, shelf registration ineligibility, temporary lack of access to public capital markets). The analysis below provides context on the extent to which this occurs. Table 7 reports the fraction of public companies raise capital via this market, how much they raise, and how large the capital raised through Regulation D offerings is compared to their public offerings.²⁸

Nearly 10% of all SEC reporting companies raised capital through Regulation D offerings during the period 2009 to 2011, and about 6% in 2012. Reporting companies account for 2% of the total amount sold through Regulation D offerings, on average, although this varies significantly by year. For comparison, non-fund issuers that are not SEC reporting companies account on average for 19% of the total amount of capital raised through Regulation D offerings during the period 2009 to 2012. As a group, reporting companies that made Regulation D

²⁸ We used listings in the Standard and Poor's Compustat and the University of Chicago's Center for Research in Securities Prices (CRSP) databases to determine public companies, although it is possible that smaller public companies are not reported by these data aggregation service providers.

offerings also raised, on average, \$19 billion annually via public offerings and \$12 billion annually via Rule 144A offerings. The size of the private offerings (Regulation D and Rule 144A) by these firms is larger than their public offerings in three of the four years under consideration, showing a continued preference for private capital markets.

Table 7. Capital raised by public companies that issue Regulation D offerings (\$billions)

Year	Number of firms (% of total public firms)	Mean size of Regulation D issues (% of total)	Mean size of public issues (% of total)	Mean size of 144A issues (% of total)
2009	533	\$26.8	\$28.2	\$19.0
	(9.3%)	(4.6%)	(2.2%)	(6.5%)
2010	542	\$6.6	\$24.2	\$23.3
	(9.7%)	(0.7%)	(2.1%)	(5.4%)
2011	542	\$4.9	\$13.5	\$6.0
	(9.7%)	(1.5%)	(3.8%)	(7.8%)
2012	481	\$25.5	\$10.8	\$0.4
	(6.2%)	(2.8%)	(0.9%)	(0.2%)

Appendix

This appendix describes the procedures used to collect the Regulation D sample and the data on the other offerings. One of the original purposes of Form D, first adopted in 1982, was to collect and analyze data on issuers using Regulation D.²⁹ However, until 2008, issuers filed Form D on paper, making the extraction of information for large-scale statistical analysis problematic. In February 2008, the SEC adopted amendments to Form D that required issuers to submit their Form D filings electronically, in a structured data format.³⁰ As a result of these requirements, which were phased in from September 2008 through March 2009, Form D filings are now machine-readable. Using basic text parsing tools, DERA staff was able to extract the reported elements and place them in a database enabling the large-scale statistical analysis reported here.

A. Regulation D sample

The methods used for extracting Form D information have been modified since our original report in 2012. As before, we collected all Form D filings (new filings and amendments) on EDGAR starting in January 2009, and extended the sample through December 2012. We extracted all fields from each filing and applied the following treatments to arrive at our final sample.

- Subsequent amendments to a new filing are treated as incremental fundraising and recorded in the calendar year in which the amendment is filed. If an issuer filed only Form D amendments, and those reference a post-2008 sale date, the first filed amendment is treated as an original Form D filing.
- The incremental amount sold between two successive filings of the same issuer is determined by taking the difference between the “total amount sold” reported in each such filing.
- We estimate the incremental amount of capital raised and reported in amended filings for which there is no original filing in electronic form. This occurs only in 2009. The estimated incremental capital raised in these instances is based on a “haircut” of the total amount sold reported in the latest filed amendment. This percentage is the average incremental amount sold in all amendments for which there is an original filing in electronic form, calculated separately for funds and non-funds. This resulted in haircut percentages of 11% and 27%, respectively. This treatment is unnecessary for offerings starting in 2010.
- Foreign issuers are determined based on the information on Issuer State that they provide.

²⁹Release No. 33–6389 (Mar. 8, 1982); 47 Fed. Reg. 11251 (1982) (adopting Form D as a replacement for Forms 4(6), 146, 240 and 242).

³⁰Release No. 33–8891 (Feb. 27, 2008); Electronic Filing and Revision of Form D, 70 Fed. Reg. 10,592 (2008) (to be codified at 17 C.F.R. pts. 230, 232 & 239).

- When an issuer checks the box to claim more than one offering exemption (Rule 504, 505, or 506), for the purpose of this analysis, we assume that any issuer that checks the box for Rule 506 is in fact relying on Rule 506.

B. Other offerings

- Data on IPOs, equity offerings by seasoned issuers (EOSIs), convertible debt offerings, public debt offerings, and private offerings are taken from Securities Data Corporation's New Issues database (Thomson Financial). Data on non-ABS Rule 144A offerings are taken from Securities Data Corporation's New Issues database and Mergent database.
- Data on ABS Rule 144A offerings are taken from the Asset-Backed Alert and Commercial Mortgage Alert publications. We use non-U.S. collateral backed deals to proxy for deals done by foreign issuers.
- Public debt offerings by government, state, municipal, and quasi-governmental issuers (e.g., Fannie Mae, Freddie Mac) are excluded from the public debt sample.

C. Corrections from the last report

- a. We obtained additional non-ABS Rule 144A data from Mergent, which allowed us to better estimate the size of that market.
- b. In the previous report, we linked new filings and subsequent amendments by the same issuer by first sale date, which resulted in errors for offerings that did not report first sale date or when there were multiple issues on the same date. In this version, we linked new filings and their corresponding amendments by accession number, a unique identifier that allows a more accurate matching of new offerings and amendments, and accounts for the different annual estimates from the previous report.