



# What is a private secondary market?

Startups and other companies that raise capital via [exempt offerings](#)—sometimes referred to as private offerings—issue securities to investors that are often illiquid. Unlike securities of publicly traded companies, securities of privately held companies may not be freely traded by investors.

The transactions or markets where investors sell these securities to other investors are called private secondary transactions or private [secondary markets](#).

## What do I need to consider before engaging in a private secondary transaction?

### Do my securities have federal securities law restrictions?

Generally, depending on how the securities are sold initially, the securities may be deemed restricted. This can include securities purchased from the company or in a secondary transaction from an [affiliate](#) of the issuer. Restricted securities are not freely tradeable and typically bear a “restrictive” legend that notes the resale limitations of the securities.

Some examples of restricted securities include securities acquired in:



[Private placement offerings](#)  
(Section 4(a)(2)  
and Rule 506(b))



[Rule 506\(c\)](#) general  
solicitation offerings



Certain [Rule 504](#)  
limited offerings



[Certain employee  
benefit plans](#)  
(Rule 701)



Offshore transactions  
(Regulation S)



Resales under  
Section 4(a)(7)



Resales by an affiliate or  
control person of the issuer  
(Rule 144)



Resales to a qualified  
institutional buyer  
(Rule 144A)

Some examples of securities that are not deemed “restricted” include securities acquired in:



[Regulation A](#) offerings



[Regulation  
Crowdfunding](#) offerings  
(after 12 months)



[Intrastate offerings](#)  
(generally, after  
6 months)



Resales under  
Section 4(a)(1)



Resales by a holder  
that is not an affiliate  
or control person of the  
issuer (Rule 144)

*continued on back page*



U.S. Securities and Exchange Commission

Office of the Advocate for Small  
Business Capital Formation

# What is a private secondary market? *(continued)*

## What federal pathways are frequently used by smaller business investors to sell their securities and how do those pathways overlap with state requirements?

There are several federal exemptions available for small business investors to sell their securities in a private secondary transaction.

If an investor's offering meets the requirements of one of the following exemptions, that resale offering still needs to be registered or meet an exemption under [state securities laws](#), unless the issuer of the security is a [reporting company](#). In addition, state securities regulators have authority to investigate and bring enforcement actions for fraud, impose state notice filing requirements, and collect state fees.



### Section 4(a)(1) Ordinary Trading Exemption

Section 4(a)(1) is a commonly used exemption for the resale of securities by any person other than an issuer, underwriter, or dealer.

Some investors structure their resale transactions based on practices that have been developed through case law. Any such offerings would need to comply with the requirements of this or another available exemption.



### Rule 144 Safe Harbor under the Section 4(a)(1) Ordinary Trading Exemption

[Rule 144](#) provides one pathway for the resale of restricted securities. Depending on whether the issuer is a reporting company and whether the investor is an affiliate, the rule has conditions on the length of time the securities must be held, the way in which they are sold, and the amount that can be sold at any one time.



### Section 4(a)(3) Dealer Exemption

Broker-dealers may rely on the Section 4(a)(3) exemption. This exemption is for transactions by a dealer that is not acting as an underwriter, which includes any person who bought the securities with a view to distribute them. This exemption is not available for the resale of restricted or control securities.

If an investor's offering meets the requirements of one of the following exemptions, that resale offering is not required to be registered or qualified by state securities regulators. [State securities regulators](#), however, have the authority to investigate and bring enforcement actions for fraud, impose state notice filing requirements, and collect state fees.



### Section 4(a)(4) Broker Exemption

Broker-dealers often rely on the Section 4(a)(4) exemption. This exemption is for the [broker's](#) part of a transaction that executes an unsolicited customer order in the market. It is not available when the broker knows or has reasonable grounds to believe that the selling customer's part of the transaction is not exempt from registration.



### Section 4(a)(7) Safe Harbor Exemption

Section 4(a)(7) provides one pathway for the resale of restricted securities. The exemption has several conditions, including limitations on the types of purchasers and the way in which the securities are sold, as well as information that must be provided to prospective purchasers.

Have suggestions on additional educational resources? Email [smallbusiness@sec.gov](mailto:smallbusiness@sec.gov).

ENGAGE WITH US:



[www.sec.gov/oasb](http://www.sec.gov/oasb)



[smallbusiness@sec.gov](mailto:smallbusiness@sec.gov)



#SECSmallBiz



202.551.5407

