

Exemptions from Prospectus Requirements...

There is no requirement to register a prospectus when offering securities if the offer is not made to the public. The most common instance of this is a "private placement", ie an issue or allotment of securities to one or more persons privately. Similarly, no prospectus requirement exists where securities are only offered to persons whose principal business is the investment of money or habitual investors and nor is there any such requirement where the minimum subscription price is no less than \$500,000.

These exemptions are reasonably widely known. A further exemption is less well known and applies to "eligible persons". Under this exemption, no prospectus is required for offers made solely to "wealthy" or "experienced" persons. A person's status as "wealthy" or "experienced" is determined by independent assessment.

A person qualifies as "wealthy" for these purposes if an independent chartered accountant certifies, on reasonable grounds, that the person has net assets of at least \$2m or had an annual gross income of at least \$200,000 for each of the last 2 financial years. Such certificate must be current in the sense that it must not pre-date the offer by more than 12 months.

A person qualifies as "experienced" for these purposes if, broadly, an independent financial service provider is satisfied on reasonable grounds that the person is able to assess the merits of the offer, and the risks involved. Note, some additional steps apply to comply with these provisions.

More and more reliance appears to be placed on these exemptions which is understandable given the high costs involved in issuing a prospectus and a tight investment market. As always, be careful in relying on these exemptions as the consequences of a mistake are severe.