

Press Release

SEC Proposes Rule Changes to Harmonize, Simplify and Improve the Exempt Offering Framework

Proposed amendments would provide a more rational framework, eliminate complexity and increase access to capital while preserving and enhancing important investor protections

FOR IMMEDIATE RELEASE

2020-55

Washington D.C., March 4, 2020 — The Securities and Exchange Commission today announced that it has voted to propose a set of amendments that would harmonize, simplify, and improve the exempt offering framework to promote capital formation and expand investment opportunities while preserving and enhancing important investor protections.

Offerings of securities must be either registered with the Commission or qualify for an exemption from the Commission's registration requirements. A majority of entrepreneurs and emerging businesses raise capital using the exempt offering framework. This capital formation activity ranges from seed capital for new businesses to growth capital for companies on the path to an initial public offering. The proposals are the most recent step in the Commission's ongoing efforts to assess the capital raising framework as a whole and improve it for the benefit of investors, entrepreneurs, and more seasoned issuers.

The Commission's proposals are substantially informed by public input received in response to the Commission's June 2019 concept release on the harmonization of securities offering exemptions. The proposed amendments, which reflect a comprehensive retrospective review of the patchwork system built over many decades, seek to address gaps and complexities in the exempt offering framework that may impede access to capital for issuers and access to investment opportunities for investors. The current framework has 10 exemptions or safe harbors, each with disparate requirements. The proposed rules are focused on reducing friction points in the offering framework to help market participants navigate the exempt offering process. For example, under the proposed rules an issuer in a qualified opportunity zone would have a clearer framework for how to conduct exempt offerings targeted to various investors, including community members, while still complying with important investor protections.

"Emerging companies—from early-stage start-ups seeking seed capital to companies that are on a path to become a public reporting company—use the exempt offering rules to access critical capital needed to create jobs and scale their businesses," said Chairman Jay Clayton. "The complexity of the current framework is confusing for many involved in the process, particularly for those smaller companies whose limited resources spent on navigating our overly complex rules are diverted from direct investments in the companies' growth. These proposals are intended to create a more rational framework that better allows entrepreneurs to access capital while preserving and enhancing important investor protections."

The Commission today also released a staff report on the impact of Regulation A on capital formation and investor protection, which was required to be provided to the Commission no later than five years following the 2015 adoption of amendments to Regulation A.

The public comment period for the proposed rule amendments will remain open for 60 days following publication of the release in the Federal Register.

FACT SHEET

Facilitating Capital Formation and Expanding Investment Opportunities by Streamlining Access to Capital for Entrepreneurs

March 4, 2020

The Securities and Exchange Commission today proposed a set of amendments to the exemptive framework under the Securities Act of 1933 that would simplify, harmonize, and improve certain aspects of the framework to promote capital formation while preserving or enhancing important investor protections.

The proposed amendments would:

- address, in one broadly applicable rule, the ability of issuers to move from one exemption to another, and ultimately to a registered offering, providing more certainty to issuers raising capital;
- increase the offering limits for Regulation A, Regulation Crowdfunding, and Rule 504 offerings, and revise certain individual investment limits based on the Commission's experience with the rules, marketplace practices, capital raising trends, and comments received;
- provide greater certainty to issuers and protection to investors by setting clear and consistent rules governing offering communications between investors and issuers, including permitting certain "demo day" activity without running afoul of the prohibition on general solicitation; and
- harmonize certain disclosure and eligibility requirements and bad actor disqualification provisions to reduce differences between exemptions, while preserving or enhancing investor protections.

Background

A majority of entrepreneurs and emerging businesses raise capital using the exempt offering framework under the Securities Act, from raising seed capital for new business to funding growth on the path to an initial public offering. The scope of exempt offerings has evolved over time through legislative changes and Commission rules, resulting in a current offering framework that is complex and made up of differing requirements and conditions for exemption, which may be confusing and difficult for issuers to navigate. In June 2019, the Commission issued a concept release that solicited public comment on possible ways to simplify, harmonize, and improve the exempt offering framework under the Securities Act. Informed by the comments received, as well as other feedback including recommendations of the Commission's advisory committees, the SEC's Government-Business Forum on Small Business Capital Formation, direct outreach to, and engagement with, investors and entrepreneurs, and Congressional feedback, the Commission's proposed amendments are intended to reduce potential friction points to make the capital raising process more effective and efficient to meet evolving market needs.

Highlights

Offering and Investment Limits. The Commission proposed revisions to the current offering and investment limits for certain exemptions.

For Regulation A:

- raise the maximum offering amount under Tier 2 of Regulation A from \$50 million to \$75 million; and
- raise the maximum offering amount for secondary sales under Tier 2 of Regulation A from \$15 million to \$22.5 million.

For Regulation Crowdfunding:

- raise the offering limit in Regulation Crowdfunding from \$1.07 million to \$5 million;
- amend the investment limits for investors in Regulation Crowdfunding offerings by:
 - not applying any investment limits to accredited investors; and
 - revising the calculation method for investment limits for non-accredited investors to allow them to rely on the greater of their annual income or net worth when calculating the limit on how much they can invest.

For Rule 504 of Regulation D:

- raise the maximum offering amount from \$5 million to \$10 million.

“Test-the-Waters” and “Demo Day” Communications. The Commission proposed several amendments relating to offering communications, including:

- a proposed new rule that would permit an issuer to use generic solicitation of interest materials to “test-the-waters” for an exempt offer of securities prior to determining which exemption it will use for the sale of the securities;
- a proposed rule amendment that would permit Regulation Crowdfunding issuers to “test-the-waters” prior to filing an offering document with the Commission in a manner similar to current Regulation A; and
- a proposed new rule that would provide that certain “demo day” communications would not be deemed general solicitation or general advertising.

Regulation A and Regulation Crowdfunding Eligibility. The proposal includes amendments to the eligibility restrictions in Regulation Crowdfunding and Regulation A. These proposed rules would permit the use of certain special purpose vehicles to facilitate investing in Regulation Crowdfunding issuers, and would limit the types of securities that may be offered and sold in reliance on Regulation Crowdfunding.

Integration Framework. The current Securities Act integration framework for registered and exempt offerings consists of a mixture of rules and Commission guidance for determining whether multiple securities transactions should be considered part of the same offering.

The Commission proposed changes to the framework to better facilitate this determination by providing a general principle of integration that looks to the particular facts and circumstances of the offering, and focuses the analysis on whether the issuer can establish that each offering either complies with the registration requirements of the Securities Act, or that an exemption from registration is available for the particular offering.

The Commission also proposed four non-exclusive safe harbors from integration:

Safe Harbor 1

Any offering made more than 30 calendar days before the commencement of any other offering, or more than 30 calendar days after the termination or completion of any other offering, would not be integrated with another offering; provided that, for an exempt offering for which general solicitation is not permitted, the purchasers either were not solicited through the use of general solicitation, or established a substantive relationship with the issuer prior to the commencement of the offering for which general solicitation is not permitted.

Safe Harbor 2

Offers and sales made in compliance with Rule 701, pursuant to an employee benefit plan, or in compliance with Regulation S would not be integrated with other offerings.

Safe Harbor 3

An offering for which a Securities Act registration statement has been filed would not be integrated with another offering if made subsequent to: (i) a terminated or completed offering for which general solicitation is not permitted; (ii) a terminated or completed offering for which general solicitation is permitted and made only to qualified institutional buyers and institutional accredited investors; or (iii) an offering that terminated or completed more than 30 calendar days prior to the commencement of the registered offering.

Safe Harbor 4

Offers and sales made in reliance on an exemption for which general solicitation is permitted would not be integrated with another offering if made subsequent to any prior terminated or completed offering.

Other Improvements to Specific Exemptions. The amendments also would:

- change the financial information that must be provided to non-accredited investors in Rule 506(b) private placements to align with the financial information that issuers must provide to investors in Regulation A offerings;
- add a new item to the non-exclusive list of verification methods in Rule 506(c);
- simplify certain requirements for Regulation A offerings and establish greater consistency between Regulation A and registered offerings; and
- harmonize the bad actor disqualification provisions in Regulation D, Regulation A, and Regulation Crowdfunding.

What's Next?

The comment period for the proposal will remain open for 60 days following publication in the Federal Register.

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Related Materials

- [Proposed Rule](#)