

March 5, 2020

SEC Proposes Amendments to Exempt Offering Rules

The SEC recently [proposed amendments](#) to rules and regulations governing exempt securities offerings with the goal of harmonizing, simplifying and improving the exempt offering framework. If implemented, these changes will be useful for both private and public companies and may facilitate access by more investors to the increasingly large private capital markets. The proposed amendments, which follow a June 2019 [concept release](#), would affect a broad range of rules, although the overall impact would generally be more incremental than fundamental. Among other things, the proposed amendments would:

- increase offering and/or investment limits applicable to several exemptions, including Regulation A, Regulation Crowdfunding and Rule 504 of Regulation D;
- ease certain restrictions on offering-related communications, including by permitting issuers to use general soliciting materials to “test-the-waters” for an exempt offering prior to selecting which exemption it will use and exempting certain “demo day” communications from being deemed general solicitation or advertising;
- reduce “integration” legal risk and uncertainty by providing issuers with specific safe harbors and a clearer path to avoid having separate transactions “integrated” into a single offering for purposes of determining exemption or registration requirements; and
- otherwise adjust the exempt offering rules to make them clearer, more consistent and less burdensome on issuers, including with respect to eligibility requirements for Regulation A and Regulation Crowdfunding, information requirements for non-accredited investors under Rule 506(b), verification methods under Rule 506(c) and bad actor disqualification provisions across several rules.

The proposed amendments are consistent with SEC Chairman Clayton’s priority of making capital markets more accessible to businesses and investors. The final rules may differ from what has been proposed, but we believe most of the changes should and will be embraced by the market, notwithstanding Commissioner Allison Herren Lee’s [dissent](#) based on investor protection concerns.

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