SEC Proposes Rule Changes to Expand Private Placements

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March 05, 2020

The Securities and Exchange Commission has voted to propose a set of amendments that it claims will simplify and improve private securities offerings in order to expand investment opportunities while maintaining investor protections and promoting capital formation.

The SEC said that the proposed amendments 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.

“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," said SEC chairman Jay Clayton. "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 SEC proposed revisions to the current offering and investment limits for certain exemptions:

For Regulation A, the SEC proposes to 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, the SEC proposed to raise the offering limit in Regulation Crowdfunding from $1.07 million to $5 million; amend the investment limits for investors by not applying any investment limits to accredited investors; and revise 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, the SEC proposed to raise the maximum offering amount from $5 million to $10 million.

The SEC proposed several amendments relating to offering communications, including a new rule that would permit an issuer to use generic solicitation of interest materials to "test-the-waters" prior to determining which exemption it will use for the sale of the securities.

Another amendment would permit Regulation Crowdfunding issuers to "test-the-waters" prior to filing an offering document with the SEC in a manner similar to current Regulation A; as well as a new rule that would provide that certain "demo day" communications would not be deemed general solicitation or general advertising.

For Regulation A and Regulation Crowdfunding eligibility, the 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.

Other specific exemptions include changing 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 in Regulation A offerings.

The SEC also plans to 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.

The public comment period will remain open for 60 days following publication in the Federal Register. The proposed rule can be read here.

Comments can be submitted on the SEC's website, or via email at rule-comments@sec.gov (include file number

S7-05-20 in the subject line.).

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