



SEC Finalizes New Limits for Regulation A and Crowdfunding

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The U.S. Securities and Exchange Commission on January 14 published new rules for exempt offerings, including a significant expansion of the annual offering limits for Regulation A and Regulation Crowdfunding issuers. In addition, the SEC clarified and codified rules related to the integration of offerings and the use of general solicitation.

With their publication in The Federal Register, the rules—which were proposed in March 2020 and approved by the SEC in November—will go into effect on March 15, 2021. According to the SEC, the rule changes are designed to facilitate capital formation and expand investment opportunities by improving access to capital in private markets.

In addition to the changes in offering limits, the new rules enhance the ability of issuers to communicate with potential investors and also streamline the Securities Act integration framework for both registered and exempt offerings.

NEW OFFERING LIMITS

The changes to annual offering limits include:

- Increasing Regulation A's Tier 2 annual offering cap to \$75 million, up from \$50 million. In addition, the cap on secondary offerings under Tier 2 has increased from \$15 million to \$22 million. Supporters of the increases have argued that a higher Tier II cap will attract a larger pool of companies to participate in Reg A+ offerings and may attract larger and more experienced investors as well.
- Crowdfunding limits rise from \$1.07 million to \$5 million per year. Similarly, advocates have long argued that the \$1.07 million cap has stymied Regulation CF's growth as an effective approach for raising capital.
- Raising the cap on private placements under Rule 503 of Regulation D, from \$5 million to \$10

million.

INTEGRATION

The SEC rules also codified a series of integration safe harbors to clarify when and how regulators will consider multiple offerings as a single event for the purposes of compliance.

Integration refers to a process used by the SEC to prevent companies from dividing one offering into multiple offerings in an attempt to improperly gain exemptions from registration requirements. Issuers found to have had integrated offerings have generally been required to fully register.

To encourage Regulation A and Regulation CF offerings, the SEC has developed safe harbors that limit integration based on issues such as:

- The timing of the offering in relation to other offerings (30 day safe harbor)
- The nature of communications with prospective investors
- Whether the offering is related to an employee benefit plan or in compliance with the rules on foreign offerings.

Harmonizing the rules across offerings will help companies remain eligible for exemptions even if they simultaneously raise money through public offerings and private investments.

GENERAL SOLICITATION

Rule 152(a)(1) is being adopted as proposed and clarifies prohibitions on general solicitation. The rule will now only apply to the offering being analyzed and not each exempt offering a sponsor has at the time. It is the issuer's obligation to refrain from the use of general solicitation, or any person acting on the issuer's behalf. The release also clarifies that an issuer could have concurrent Rule 506(c) and Rule 506(b) offerings, or any other combination of concurrent offerings, without integration concerns, so long as no investors are accepted into an exempt offering, unless they were not solicited through general solicitation or there is a substantive relationship with the purchaser prior to the commencement of the exempt offering.

INVESTOR COMMUNICATIONS

Under Regulation A, issuers have been able to solicit interest from investors if they meet certain requirements. However, many other exempted offerings have not allowed issuers to engage in oral or written testing-the-waters communications with potential investors.

Under the new rules, an issuer would be able to solicit interest from potential investors before they determine which exempt offering method they intend to use. Reg CF issuers are now allowed to conduct general solicitations of interest. Previously, such solicitations were limited to qualified investment brokers and accredited investors.

The SEC will now allow issuers to take part in demo days. At demo day events issuers should not refer to any specific securities offerings, and the sponsors should not be paid or charge fees for holding the event. If they participate in a demo day, issuers are still eligible to participate in a Regulation D offering under Rule 506(b).

OTHER CHANGES

In addition to the increased limits, changes to integration and investor communications, the revised rules also:

- Simplify existing bad actor provisions under Regulation A, Regulation Crowdfunding, and Regulation D
- Allow an accredited investor to provide proof of its status in a written representation to an issuer depending on the relationship and prior transactions between issuer and investor
- Harmonize several other provisions across exempt offerings.

To learn more about these changes, contact us.

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