

SEC Adopts Private Offering Reforms

On November 2, 2020, the U.S. Securities and Exchange Commission (SEC) adopted amendments to its rules to facilitate capital raising in exempt offerings under the Securities Act of 1933 (the Securities Act). These amendments increase clarity and flexibility in the conduct of offerings, harmonize disclosure requirements and expand some exemptions. These amended rules take effect 60 days after publication in the Federal Register.

The main areas addressed by the amendments include:

- Integration principles and application. Integration doctrine seeks to prevent an issuer from avoiding registration by artificially dividing a single offering into multiple offerings. The amendments increase the flexibility for an issuer to conduct multiple offerings either simultaneously or close in time without integration.
- General Solicitation and Offering Communications. The most widely used private offering exemption, Rule 506(b), prohibits any general solicitation or general advertising in connection with the offering. The amendments provide more flexibility to attend demo days and similar events and solicit indications of interest without violating the prohibition on general solicitation.
- Rule 506(c) Verification Requirements. The Rule 506(c) exemption permits general solicitation and general advertising, but only if the issuer takes reasonable steps to verify that each purchaser in the offering is an accredited investor. The amendments add a safe harbor limiting the verification requirements if a given investor was verified within the past five years.
- Offering Limits Under Regulation A, Rule 504 and Regulation Crowdfunding. The amendments increase the maximum offering size for Tier 2 of Regulation A from \$50 million to \$75 million and for Rule 504 of Regulation D from \$5 million to \$10 million. In addition, Regulation Crowdfunding was amended to increase the issuer offering limit from \$1.07 million to \$5 million, eliminate the individual investment limits for accredited investors and allow other investors to rely on the greater of their income or net worth in calculating their investment limit.
- Harmonization of Disclosure Requirements. The financial statement requirements in Rule 502(b) were amended to align better with the standards in Regulation A.

POSTED:

Jan 14, 2021

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