

SEC adopts amendments clarifying exemptions to private offerings



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Earlier this month, the Securities and Exchange Commission [adopted a number of amendments](#) in order to clarify and synchronize the current exemptions to registration for private offerings. The amendments were adopted following extensive feedback received from internal committees as well as private investors and companies after the SEC submitted its proposal for the amendments in March of 2020.

The amendments adopted by the SEC cover a variety of different areas including: (1) Integrated Offerings, (2) Regulations A, (3) Crowdfunding, (4) Rule 504 of Regulation D, and (5) Communications. Each of the amendments related to such categories are described below.

Integrated Offerings

When issuers engage in multiple offerings close together in time, typically it must be analyzed whether the offerings are “integrated” and treated as one single offering. The amendments provide four safe harbors from integrating multiple offerings into a single offering:

1. With limited exceptions, 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, will not be integrated with such other offering(s)
2. Offerings made in compliance with Rule 701, in connection with an employee benefit plan, or in accordance with Regulation S will not be integrated
3. An offering for which a Securities Act registration statement has been filed will not be integrated if it is made subsequent to:
 - a completed offering for which general solicitation is not permitted,
 - a completed offering for which general solicitation is permitted that was made to qualified institutional buyers and institutional accredited investors, or

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- an offering for which general solicitation is permitted that was completed more than 30 calendar days prior to the commencement of the registered offering

4. Offerings made in reliance on an exemption for which general solicitation is permitted will not be integrated if made subsequent to any completed offering

Regulation A

The SEC's Regulation A amendments (1) raise the maximum offering amount allowable under Tier 2 of Regulation A from \$50 Million to \$75 Million; and (2) raise the maximum offering amount allowable for secondary sales under Tier 2 of Regulation A from \$15 Million to \$22.5 Million.

Crowdfunding

The SEC's Regulation Crowdfunding amendments (1) raise the limits from \$1.07 Million to \$5 Million, (2) remove investment limits for accredited investors, and (3) extend for 18 months the temporary relief providing an exemption from the requirement to review financial statements for issuers offering \$250,000 or less of securities.

Rule 504 of Regulation D

The SEC's Rule 504 of Regulation D amendments raises the maximum amount of an offering from \$5 Million to \$10 Million.

Communications

The SEC's Communications amendments (1) permit an issuer to send generic solicitation of interest materials to 'test-the-waters' for an exempt offering prior to determining which exemption upon which it will rely, (2) permit Regulation Crowdfunding issuers to 'test-the-waters' prior to filing an offering document in a manner similar to Regulation A, and (3) provide that certain "demo day" communications will not be deemed general solicitation or general advertising.

If you have any questions about this post, please feel free to contact any of our attorneys below. Our Securities team at McDonald Hopkins is experienced in private placements and can assist you in your capital raising efforts.



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