

New SEC Proposed Amendments Seek to Improve and Harmonize Private Offering Exemptions

March 18, 2020 – Cross-Border Counselor
by Jason Brenkert

On March 4, 2020, the Securities and Exchange Commission (the “Commission”) proposed amendments to the private offering exemptive framework under the Securities Act of 1933, as amended (the “Securities Act”) to “simplify, harmonize, and improve certain aspects of the framework” with the goal of promoting capital formation while maintaining investor protections.

The current private offering framework is a set of exemptions and safe harbors which permit issuers to raise capital through various, differing rules which don’t require the filing of a registration statement with the Commission under the Securities Act. These rules are meant to provide issuers with a less expensive and more efficient alternative to a registered public offering in exchange for certain limitations and requirements being placed on the offering, typically regarding the number and type of investors, the type and context of solicitations, the size of the offering and individual investments and certain limited information requirements.

The conflicting requirements of the current, differing rules and the potential integration (determination of whether multiple transactions are part of the same offering) of offerings conducted under this “patchwork system” has resulted in a complex and sometimes confusing regulatory framework where the interaction of offerings conducted under the various exemptions and safe harbors is often uncertain, leading to potential violations of the Securities Act. As Chairman Clayton stated in relation to the proposed amendments, “[t]he 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.”

As noted in the Commission’s press release, “[t]he Commission’s proposed amendments are intended to reduce potential friction points to make the capital raising process more effective and efficient to meet evolving market needs.” The proposed amendments would:

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- address, in one broadly applicable rule, the ability of issuers to move from one exemption to another, and ultimately to a registered offering;
- increase the offering limits for Regulation A, Regulation Crowdfunding, and Rule 504 offerings, and revise certain individual investment limits;
- provide greater certainty to issuers and protection to investors by setting clear and consistent rules governing offering communications between investors and issuers, including permitting certain “demo day” activity without running afoul of the prohibition on general solicitation; and
- harmonize certain disclosure and eligibility requirements and bad actor disqualification provisions to reduce differences between exemptions.

For more information on the proposed rules, see our recent eUpdate [here](#).