

SEC Proposes Rule Changes Relating to Exempt Offerings Which Would Include Increases to Offering Limits

Hinshaw Alert | 3 min read

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On March 4, 2020, the SEC proposed a set of amendments designed to simplify and improve the exempt offering framework. The SEC's stated goal is to make it easier for issuers to access the capital markets and to provide additional investment opportunities for investors.

These proposed amendments include, among other things, regulations that would increase the offering limits in exempt offerings relating to Regulation A, Regulation Crowdfunding, and Rule 504 of Regulation D.

We discuss these offering limit increases in detail below. Public comments on the proposed rules will be due in early May.

Regulation A

Current Offering Limits

On March 25, 2015, the SEC adopted rules significantly amending Regulation A.

The SEC's rules expanded and revised Regulation A, creating two tiers of Reg A offerings:

- Tier 1 offerings consist of securities offerings of up to \$20 million in a 12-month period, including sales for the account of selling securityholders equal to the lesser of \$6 million or 30% of the aggregate offering price (including sales by the issuer).
- Tier 2 offerings consist of securities offerings of up to \$50 million in a 12-month period, including sales for the account of selling securityholders equal to the lesser of \$15 million or 30% of aggregate offering price (including sales by the issuer).

The portion of the aggregate offering price attributable to the securities of selling securityholders shall not exceed 30% of the aggregate offering price of a particular offering in:

- i. The issuer's first offering pursuant to Regulation A; or
- ii. Any subsequent Regulation A offering that is qualified within one year of the qualification date of the issuer's first offering.

Proposed Offering Limits

The proposed rules would increase maximum offering amount under a Tier 2 offering from \$50 million to \$75 million, including sales by selling security-holders of no more than \$22.5 million.

Crowdfunding

Current Offering and Investment Limits

The crowdfunding rules contain the following thresholds and limits:

- The aggregate amount of securities that may be sold by a company within a 12-month period in crowdfunding transactions may not exceed \$1.070 million.
- During any 12-month period, the aggregate amount of securities sold to any investor **by all companies in crowdfunding transactions** must not exceed the greater of:
 - i. \$2,200 or 5% of the **lesser** of the investor's annual income or net worth, if either the annual income or the net worth of the investor is less than \$107,000;
 - ii. 10% of the **lesser** of the investor's annual income or net worth, if **both** the annual income or net worth of the investor is equal to or more than \$107,000; and
 - iii. a maximum aggregate amount of \$107,000 for all crowdfunding purchases in the 12-month period.

The investor purchase limits are calculated on all crowdfunding purchases made by an investor during any 12-month period. Thus, an investor's purchases **in all crowdfunding transactions during such period** must be **aggregated** (and not just from an offering in which the investor is participating).

The net worth and annual income tests are calculated using the accredited investor tests contained in Rule 501 of Regulation D.

Proposed Offering and Investment Limits

The proposed rules would increase the maximum offering limits under Regulation Crowdfunding from \$1.07 million for a 12-month period to \$5 million.

In addition, the proposed rules would eliminate the purchase limitations for accredited investors. They would be able to purchase any amount of securities in a crowdfunding offering and would not be subject to the 12-month period rule.

Non-accredited investors would be allowed to purchase:

- i. The **greater** of \$2,200, or 5% of the **greater** of the investor's annual income or net worth, if **either** the investor's annual income or net worth is less than \$107,000; or
- ii. 10% of the **greater** of the investor's annual income or net worth, not to exceed an amount sold of \$107,000, if **both** the investor's annual income and net worth are equal to or more than \$107,000.

As a consequence, a non-accredited investor satisfying the requirements of clause (ii) above would be able to purchase up to \$107,000 in all crowdfunding offerings in which the investor participated during a 12-month period.

Rule 504

Rule 504 permits sales of up to \$5 million of securities during any twelve month period.

The proposed rules would increase the maximum offering limits under Rule 504 for \$5 million to \$10 million.

If you have any questions or comments, please feel free to contact Tim Sullivan (312-704-3852 | tsullivan@hinshawlaw.com) or Michael Morehead (217-467-4915 | mmorehead@hinshawlaw.com).

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