

SEC Harmonizes and Improves Exempt Offering Framework

Alert

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The SEC adopted final rules which the SEC believes harmonizes, simplifies and improves the complex exempt offering framework.

The amendments generally:

- Establish more clearly, in one broadly applicable rule, the ability of issuers to move from one exemption to another
- Increase the offering limits for Regulation A, Regulation Crowdfunding, and Rule 504 offerings and revise certain individual investment limits
- Set clear and consistent rules governing certain offering communications, including permitting certain “test-the-waters” and “demo day” activities
- Harmonize certain disclosure and eligibility requirements and bad actor disqualification provisions

The amendments establish a new integration framework providing a general principle that looks to the particular facts and circumstances of two or more offerings, and focuses the analysis on whether the issuer can establish that each offering either complies with the registration requirements of the Securities Act, or that an exemption from registration is available for the particular offering.

The amendments additionally provide four non-exclusive safe harbors from integration providing that:

- 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

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with such other offering(s). However, where an exempt offering for which general solicitation is prohibited follows by 30 calendar days or more an offering that allows general solicitation, the issuer must have a reasonable belief, based on the facts and circumstances, with respect to each purchaser in the exempt offering prohibiting general solicitation, that the issuer (or any person acting on the issuer's behalf) either did not solicit such purchaser through the use of general solicitation or established a substantive relationship with such purchaser prior to the commencement of the exempt offering prohibiting general solicitation

- Offers and sales made in compliance with Rule 701, pursuant to an employee benefit plan, or in compliance with Regulation S will not be integrated with other offerings
- An offering for which a Securities Act registration statement has been filed will not be integrated if it is made subsequent to:
 - A terminated or completed offering for which general solicitation is not permitted
 - A terminated or completed offering for which general solicitation is permitted that was made only to qualified institutional buyers and institutional accredited investors
 - An offering for which general solicitation is permitted that terminated or was completed more than 30 calendar days prior to the commencement of the registered offering
 - Offers and sales made in reliance on an exemption for which general solicitation is permitted will not be integrated if made subsequent to any terminated or completed offering

The final rules are effective 60 days after publication in the Federal Register with the exception of the temporary crowdfunding accommodations covered by the amendments which become effective on the earlier of the date of publication in the Federal Register or March 1, 2021 and remain in effect until March 1, 2023.

For more information on the changes to the exempt offering framework, please contact one of the members of the [Corporate Finance](#) division or the Stinson LLP contact with whom you regularly work.

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