

SEC Adopts Rules to Permit Crowdfunding; Proposes Amendments to Existing Rules to Facilitate Capital Raising by Smaller Companies

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On October 30, 2015, the U.S. Securities and Exchange Commission (SEC) adopted rules to permit companies to offer and sell securities through crowdfunding. The SEC also proposed amendments to certain existing rules under the Securities Act of 1933, as amended (Securities Act), to help smaller companies raise capital and provide investors with further protections.

Crowdfunding Rules

Crowdfunding is a method of raising capital that has been used to raise funds through the Internet. Title III of the Jumpstart Our Business Startups Act of 2012 created a federal exemption under the securities laws so that this type of funding method may be used to offer and sell securities.

The SEC's final rules will, among other things:

- Permit a company to raise a maximum aggregate amount of \$1 million through crowdfunding offerings in a 12-month period; and
- Permit individual investors, over a 12-month period, to invest in the aggregate across all crowdfunding offerings (i) up to 5% of the lesser of their annual income or net worth, or \$2,000, whichever is greater, if either their annual income or net worth is less than \$100,000, or (ii) up to 10% of the lesser of their annual income or net worth, if both their annual income and net worth are equal to or more than \$100,000.

During the 12-month period, the total amount of securities sold to an investor through all crowdfunding offerings may not exceed \$100,000. Also, eligible companies will be required to file financial statements and certain other information about their business and the securities offering with the SEC on a new Form C, and must provide such information to investors and the intermediary facilitating the offering. Certain companies will not be eligible to use the exemption from registration provided by the crowdfunding rules, including, among others, non-U.S. companies and companies required to report under the Securities Exchange Act of 1934, as amended (i.e., public companies).

All transactions relying on the new crowdfunding rules would need to be conducted through an SEC-registered intermediary, either a broker-dealer or a funding portal.

These crowdfunding rules and related forms will be effective 180 days after they are published in the Federal Register, except that the forms enabling funding portals to register with the SEC will be effective January 29, 2016.

Proposed Amendments to Rules 147 and 504

The SEC also proposed amendments to Rule 147 under the Securities Act, which currently provides a safe harbor for compliance with the Section 3(a)(11) exemption from registration for intrastate securities offerings. The SEC's proposal seeks to modernize the rule for intrastate offerings to allow companies to raise money from investors within their state without having to concurrently register the offers and sales at the federal level.

The SEC also proposed to amend Securities Act Rule 504 of Regulation D to increase the aggregate amount of securities that may be offered and sold pursuant to Rule 504 in any 12-month period from \$1 million to \$5 million, and to disqualify certain bad actors from participating in Rule 504 offerings.

The SEC seeks public comment on the proposed rule amendments for a 60-day period following their publication in the Federal Register.

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