

FACT SHEET

Exemptions to Facilitate Intrastate and Regional Securities Offerings

SEC Open Meeting

Oct. 26, 2016

Action

The Securities and Exchange Commission is considering whether to adopt new and amended rules that would update and modernize how companies can raise money from investors through intrastate and small offerings. The rules are part of the Commission's efforts to assist smaller companies with capital formation while maintaining investor protections.

Highlights of the Final Rules

New Rule 147A and Amendments to Rule 147

The adoption of new Rule 147A and the amendments to Securities Act Rule 147 would update and modernize the existing intrastate offering framework that permits companies to raise money from investors within their state without concurrently registering the offers and sales at the federal level.

Amended Rule 147 would remain a safe harbor under Section 3(a)(11) of the Securities Act, so that issuers may continue to use the rule for securities offerings relying on current state law exemptions. New Rule 147A would be substantially identical to Rule 147 except that it would

allow offers to be accessible to out-of-state residents and for companies to be incorporated or organized out-of-state.

Both new Rule 147A and amended Rule 147 would include the following provisions:

- A requirement that the issuer has its “principal place of business” in-state and satisfies at least one “doing business” requirement that would demonstrate the in-state nature of the issuer’s business
- A new “reasonable belief” standard for issuers to rely on in determining the residence of the purchaser at the time of the sale of securities
- A requirement that issuers obtain a written representation from each purchaser as to residency
- A limit on resales to persons residing within the state or territory of the offering for a period of six months from the date of the sale by the issuer to the purchaser
- An integration safe harbor that would include any prior offers or sales of securities by the issuer made under another provision, as well as certain subsequent offers or sales of securities by the issuer occurring after the completion of the offering
- Legend requirements to offerees and purchasers about the limits on resales

Amendments to Rule 504 and Repeal of Rule 505

Rule 504 of Regulation D is an exemption from registration under the Securities Act for offers and sales of up to \$1 million of securities in a 12-month period, provided that the issuer is not an Exchange Act reporting company, investment company, or blank check company. The rule also imposes certain conditions on the offers and sales, with limited exceptions made for offers and sales made in accordance with specified types of state registration provisions and exemptions. The amendments to Rule 504 would retain the existing framework, while increasing the aggregate amount of securities that may be offered and sold under Rule 504 in any 12-month period from \$1 million to \$5 million and disqualifying certain bad actors from participation in Rule 504 offerings. The final rules also would repeal Rule 505, which permits offerings of up to \$5 million annually that must be sold solely to accredited investors or no more than 35 non-accredited investors.

Background

The Commission adopted Rule 147 in 1974 as a safe harbor to a statutory intrastate exemption, Section 3(a)(11), which was included in the Securities Act upon its adoption in 1933. Commenters, market participants and state regulators have indicated that the combined effect of the statutory limitation on offers to persons residing in the same state or territory as the issuer and the prescriptive eligibility requirements of Rule 147 limit the availability of the exemption for companies that would otherwise conduct intrastate offerings.

The \$1 million aggregate offering limit in Rule 504 has been in place since 1988.

Effective Date

Amended Rule 147 and new Rule 147A would become effective 150 days after publication in the Federal Register. Amended Rule 504 would become effective 60 days after publication in the Federal Register. The repeal of Rule 505 would become effective 180 days after publication in the Federal Register.