

[Securities Regulation Daily Wrap Up, TOP STORY—SEC seeks comment on Securities Act registration exemptions, \(Jun. 19, 2019\)](#)

Securities Regulation Daily Wrap Up

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A new concept release reviews exemptions from registration and seeks comment on possible ways to how to improve several aspects of the existing exempt offering framework.

The SEC has requested public comment on ways to simplify, harmonize, and improve the framework for exemptions from registration under the Securities Act. Because the framework for exempt offerings has changed significantly in recent years, the Commission believes that the capital markets would benefit from a comprehensive review of the framework's design and scope. The concept release takes a broad review of the available exemptions to the registration requirements and seeks comments in order to assess whether changes should be made to improve the consistency, accessibility, and effectiveness of exemptions for both companies and investors (*Concept Release on Harmonization of Securities Offering Exemptions*, [Release No. 33-10649](#), June 18, 2019).

Registration exemptions. The concept release noted that since the JOBS Act of 2012, a number of exemptions from registration have been introduced, expanded, or revised. Consequently, the exempt offering framework has become complex, and market participants have urged the Commission to undertake a comprehensive review of the available exemptions. In this concept release, then, the Commission has undertaken a review of the exemptions from registration in order to improve the framework and to identify any potential overlap or gaps. Among other items, the release also considers: whether the limitations on who can invest in certain exempt offerings, and how much, are appropriate; whether the Commission should expand companies' ability to raise capital through pooled investment funds; and, if exemptions governing the secondary trading of securities initially issued in exempt offerings should be revised.

"We are taking a critical look at our exemptions from registration to ensure that our multifaceted private offering framework works for investors and entrepreneurs alike, no matter where they are located in the United States," said SEC Chairman Jay Clayton. "Input from startups, entrepreneurs and investors who have first-hand experience with our framework will be key to our efforts to analyze and improve the complex system we have today."

Release highlight. The release [seeks comments](#) on:

- The Exempt Offering Framework: Whether the Commission's exempt offering framework, as a whole, is consistent, accessible, and effective for both companies and investors or whether the Commission should consider changes to simplify, improve, or harmonize the exempt offering framework.
- The Capital Raising Exemptions within the Framework: Whether there should be any changes to improve, harmonize, or streamline any of the capital raising exemptions, specifically: the private placement exemption and Rule 506 of Regulation D, Regulation A, Rule 504 of Regulation D, the intrastate offering exemptions, and Regulation Crowdfunding.
- Potential Gaps in the Framework: Whether there may be gaps in the Commission's framework that may make it difficult, especially for smaller companies, to rely on an exemption from registration to raise capital at key stages of their business cycle.
- Investor Limitations: Whether the limitations on who can invest in certain exempt offerings, or the amount they can invest, provide an appropriate level of investor protection or pose an undue obstacle to capital

formation or investor access to investment opportunities, including a discussion of the persons and companies that fall within the "accredited investor" definition.

- **Integration:** Whether the Commission can and should do more to allow companies to transition from one exempt offering to another and, ultimately, to a registered public offering, if desired, without undue friction or delay.
- **Pooled Investment Funds:** Whether the Commission should take steps to facilitate capital formation in exempt offerings through pooled investment funds, including interval funds and other closed-end funds, and whether retail investors should be allowed greater exposure to growth-stage companies through pooled investment funds in light of the potential advantages and risks of investing through such funds.
- **Secondary Trading:** Whether the Commission should revise its rules governing exemptions for resales of securities to facilitate capital formation and to promote investor protection by improving secondary market liquidity.

Comments should be received on or before 90 days after publication in the Federal Register.

Crowdfunding report. The Commission has also released a [staff report](#) on the impact of Regulation Crowdfunding, and the relevant findings are discussed in the context of the concept release. The report was required to be provided to the Commission no later than three years following the effective date of the [crowdfunding rules](#). The report itself indicates that the number of crowdfunding offerings as well as the total amount of funding during the study period was relatively modest. The typical offering was small and raised less than the 12-month offering limit, and the majority of issuers seeking financing under Regulation Crowdfunding were also relatively small and early in their lifecycle.

The release is [No. 33-10649](#).

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