



## SEC Explores Ways to Simplify, Harmonize, and Improve the Framework For Exempt Offerings

### IN SHORT

**The Situation:** In recent years, the overall framework for exempt offerings has shifted as new exemptions from the registration requirements of the Securities Act of 1933 ("Securities Act") have been introduced and existing exemptions have been revised or expanded. As a result of the fragmentary nature of these changes, the SEC believes that U.S. capital markets would benefit from a comprehensive review of the design and scope of the exempt offering framework.

**The Result:** The SEC has issued a concept release and requested public comment on possible ways to simplify, harmonize, and improve the framework for exempt offerings in order to promote capital formation while maintaining necessary investor protections.

**Looking Forward:** Market participants will have until September 24, 2019 to provide input in response to the SEC's questions or provide feedback on the issues raised in the release.

The Securities Act contains various exemptions from its registration requirements and authorizes the SEC to adopt additional exemptions. Over time, the scope of the available exemptions has evolved as a result of legislative changes, SEC rulemaking initiatives, and evolving SEC staff guidance. In the last decade alone, the Jumpstart Our Business Startups Act of 2012 ("JOBS Act"), the Fixing America's Surface Transportation Act of 2015 ("FAST Act"), and the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 ("Economic Growth Act") have significantly expanded the options available to issuers seeking to raise capital through exempt offerings. This evolution has led to a complex framework of requirements applicable to both issuers raising capital in reliance on exemptions and those investing in exempt offerings.

On June 18, 2019, the SEC issued a concept release requesting comment from the public on ways to simplify, harmonize, and improve the framework for exempt offerings in order to promote capital formation while maintaining necessary investor protections.

The SEC believes that U.S. capital markets would benefit from a comprehensive review of the design and scope of the exempt offering framework.



### Areas of Review

Leveraging previously received feedback from market participants as well as SEC staff reports and analyses, the release examines broad topics relevant across the exempt offering framework as well as specific requirements, investor protections, and conditions for each exemption within the existing framework. In each case, the SEC requests information regarding the potential impact of proposed changes on the volume and nature of future capital raising and the protection of investors.

## Broad Topics

The release highlights certain key concepts that extend across the exempt offering framework:

**Accredited Investor Status.** The "accredited investor" definition, which is a central component of several registration exemptions, serves as a proxy for an investor's financial sophistication and ability to fend for itself. Accredited investors have significantly more access to a wider range of investment opportunities compared to non-accredited investors. The release solicits input on, among other things, whether additional categories should be included as accredited investors, whether existing financial threshold requirements should be adjusted, whether alternative sophistication measures should be used to qualify investors as accredited, and whether a broader range of investment opportunities should be made available to non-accredited investors.

**Integration.** Integration refers to the framework for determining whether multiple securities transactions should be considered part of the same offering in evaluating whether registration is required or if an exemption is available. The SEC has articulated its integration views through rulemaking, safe harbors, SEC staff no-action letters, and other interpretive guidance. The fragmented nature of these articulations, taken together with evolving registration exemptions, has led to complexity and market uncertainty. In addition to questions about specific safe harbor rules, the release solicits broad input on whether the SEC should propose a single integration doctrine applicable to all exempt offerings, whether each offering's compliance with an exemption's requirements should replace the existing integration analysis, or whether an alternative integration analysis should be considered.

**Secondary Trading.** The release acknowledges that secondary market liquidity for investors in exempt offerings is integral to the ability to raise capital in a primary offering. While illiquid securities may result in a stable shareholder base, they also may give rise to difficulties in attracting investors, resulting in higher cost of capital, the potential for an illiquidity discount, and impairment of investors' ability to diversify their portfolios. Against this backdrop, the SEC is soliciting input on the degree to which secondary liquidity concerns affect capital raising and investing decisions, whether changes should be made to preempt state securities registration or other requirements applicable to secondary sales, and whether other changes might improve liquidity. The SEC also is soliciting comments on specific potential changes to existing safe harbors, including reducing the holding periods required by Rule 144—the most frequently utilized safe harbor for resales of securities.

## Specific Exemptions

In addition to these broadly applicable considerations, the release examines each exemption within the current exempt offering framework. In doing so, the SEC highlights feedback previously received from market participants as well as recommendations and analysis from prior SEC staff reviews of these issues. For these exemptions, the SEC is soliciting input on specific potential changes, more fundamental changes, such as whether numerous exemptions should be combined, and potential consequences for issuer and investor behavior and participation. The release also acknowledges potential gaps in the existing framework—particularly for small and emerging companies—and requests input on options to provide better access to capital, including through a potential micro-offering exemption.

Read the full text of the concept release [here](#).

### THREE KEY TAKEAWAYS

1. The concept release initiates a top-to-bottom review in order for the SEC to assess whether changes are necessary or appropriate to simplify, improve, or harmonize the exempt offering framework.
2. The release is a direct result of the SEC's expressed belief that issuers and investors could benefit from a consistent framework that is not excessively complex. Endia culluptassi bla que molum utem que est fugita.
3. The release provides market participants with an opportunity to highlight areas for improvement and



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clarification as the SEC undertakes to review areas of confusion and market inefficiency in order to evaluate potential changes that might broaden access to capital and remove obstacles to capital formation, while also preserving important investor protections.

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