



Virtual Meeting of the SEC's Small Business Capital Formation Advisory Committee



May 8, 2020

WebEx Reminders

- Please remain on mute unless speaking.
- To offer a comment or ask a question, please use the chat function to notify the moderator you would like to speak.
- When you speak, please first state your name.

Disclaimer

The views expressed today are the speakers' own and do not necessarily reflect those of the Commission, Commissioners, or Commission Staff.

Commissioner Opening Remarks

COVID-19 Crowdfunding Relief

- Intended to expedite the offering process for established companies (at least 6 months of operations)
- Process Changes:
 - Offers permitted after filing Form C, with financial statements initially omitted
 - Investment commitments only after filing Form C updated with financial statements
 - Investment commitments may be cancelled for 48 hours from the time given or if there is a material change to the offering
 - Sales permitted as soon as target offering amount reached, with rolling closings thereafter
- Offers up to \$250,000 are exempt from requirement that financial statements be reviewed by an independent public accountant (up from \$107,000 threshold)
- Effective for offerings initiated between May 4, 2020 and August 31, 2020
- Clear, prominent disclosure to investors required

* See [Press Release 2020-101](#) (May 4, 2020)

Discussion of COVID-19 Observations

Capital Formation Proposal

The Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets proposal was published on March 4, 2020 and includes amendments to simplify, harmonize, and improve certain aspects of the exempt offering framework to promote capital formation while preserving or enhancing important investor protections.

Summary video at: <https://www.sec.gov/page/oasb-videos>



The Office of the Advocate for Small Business Capital Formation prepared an **overview chart** highlighting several of the proposed changes to the exemptions.

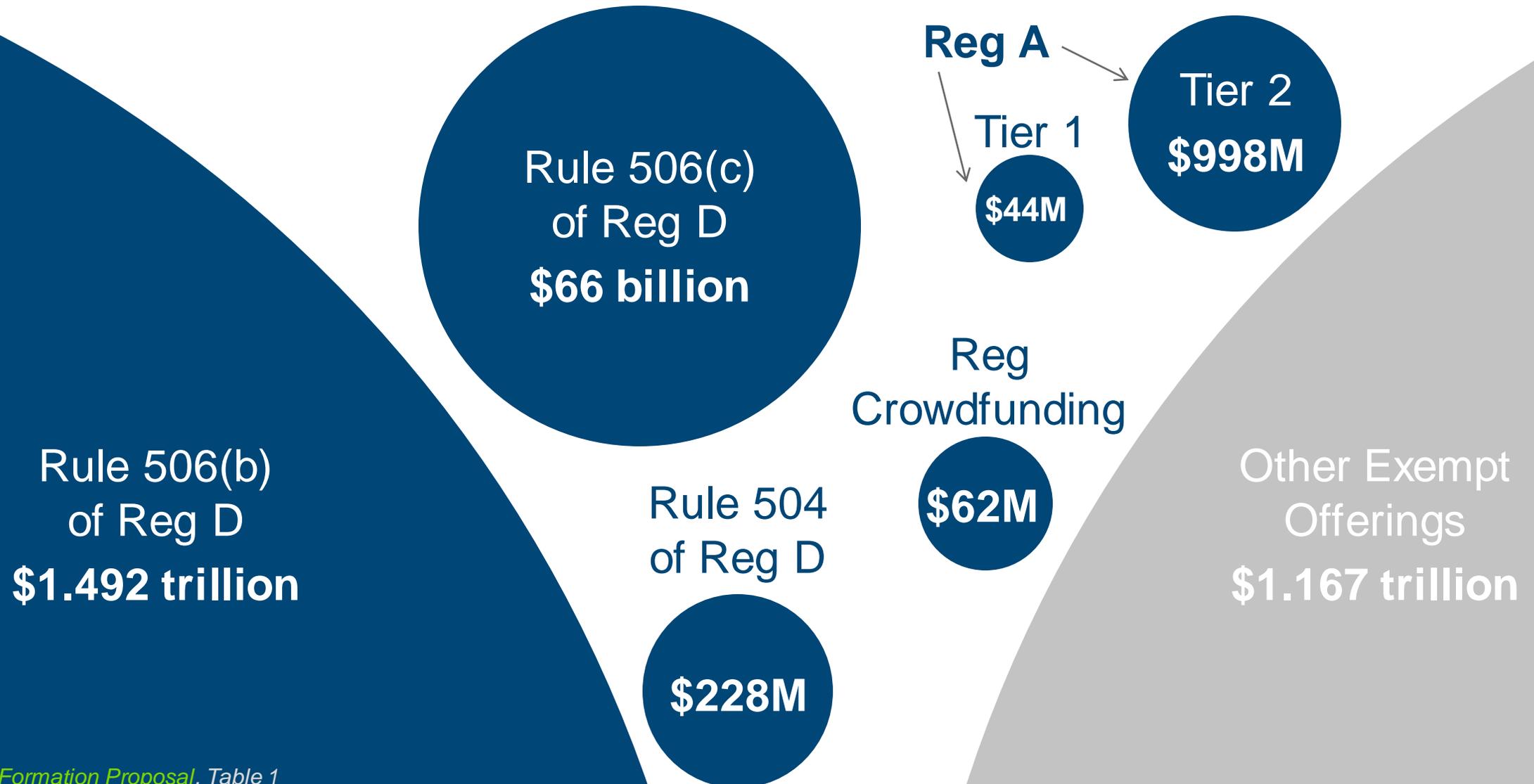
Capital Formation Proposal: Overview of Proposed Capital-Raising Exemptions**

Type of Offering	Offeror Limit within 12-month Period	General Solicitation	Issuer Requirements	Investor Requirements	SEC Filing or Disclosure Requirements	Restrictions on Terms	Preemption of State Registration and Qualification
Section 4(a)(2)	None	No	None	Transactions by an issuer not involving any public offering. See SEC v. Ralston Purina Co.	None	Yes. Restricted securities	No
Rule 506(b) of Regulation D	None	No	"Bad actor" disqualifications apply	Unlimited accredited investors Up to 35 sophisticated but non-accredited investors in a 90-day period	Form D AIAA disclosure requirements for non-accredited investors offering to non-accredited investors with Regulation A offerings	Yes. Restricted securities	Yes
Rule 506(c) of Regulation D	None	Yes	"Bad actor" disqualifications apply	Unlimited accredited investors Issuer must take reasonable steps to verify that all purchasers are accredited investors	Form D	Yes. Restricted securities	Yes
Regulation A: Tier 1	\$20 million	Permitted; before qualification, testing; no waters permitted before and after the offering statement is filed	U.S. or Canadian issuer Excludes blank check companies, registered investment companies, business development companies, issuers of certain securities, certain issuers subject to a Section 12(b) order, and Regulation A and reporting issuers that haven't filed certain transactions	None	Form 1-A, including two years of financial statements Red report	No	No
Regulation A: Tier 2	\$75 million		"Bad actor" disqualifications apply No asset-backed securities	Non-accredited investors are subject to investment limits based on the greater of annual income and net worth, unless securities will be listed on a national securities exchange	Form 1-A, including two years of audited financial statements Annual, semi-annual, current, and exit reports	No	Yes
Rule 504 of Regulation D	\$5 million	Permitted in limited circumstances	Exclude blank check companies, Exchange Act reporting companies and investment companies "Bad actor" disqualifications apply	None	Form D	Yes. Restricted securities except in limited circumstances	No
Regulation Crowdfunding: Section 4(a)(6)	\$5 million	Test if securities are resold before a Form C is filed: - Permitted with limits on advertising - Offering must be conducted on an internet platform through a registered intermediary	Exclude non-U.S. issuers, blank check companies, Exchange Act reporting companies, and investment companies "Bad actor" disqualifications apply	No investment limits for accredited investors Non-accredited investors are subject to investment limits based on the greater of annual income and net worth	Form C, including two years of financial statements that are certified, reviewed or audited, as required Progress and annual reports	12-month resale limitations	Yes
Intrastate: Section 3(a)(11)	No federal limit (generally, individual state limits between \$1 and \$5 million)	Offerors must be in-state residents	In-state residents "doing business" and incorporated in state; excludes registered investment companies	Offerees and purchasers must be in-state residents	None	Securities must be sold to investors in-state residents	No
Intrastate: Rule 147	No federal limit (generally, individual state limits between \$1 and \$5 million)	Offerors must be in-state residents	In-state residents "doing business" and incorporated in state; excludes registered investment companies	Offerees and purchasers must be in-state residents	None	Yes. Resales must be within state for six months	No
Intrastate: Rule 147A	No federal limit (generally, individual state limits between \$1 and \$5 million)	Yes	In-state residents and "doing business" in-state; excludes registered investment companies	Purchasers must be in-state residents	None	Yes. Resales must be within state for six months	Yes

** This chart was created by the Office of the Advocate for Small Business Capital Formation and highlights several of the proposed amendments to the exemptions from registration. We encourage you to look at the [chart](#) for more details and to share your feedback.

Download at: www.sec.gov/oasb

Overview of Amounts Raised in Exempt Markets in 2019



* See [Capital Formation Proposal](#), Table 1

The following slides are meant to provide only a very high-level summary of certain proposed amendments to facilitate discussion. Please review the release for more details, available online at:

<https://www.sec.gov/rules/proposed/2020/33-10763.pdf>

Increases to Annual Offering Limits

	Current Rules	Proposed Rules
Regulation Crowdfunding	\$1.07 million	\$5 million
Rule 504 of Regulation D	\$5 million	\$10 million
Regulation A: Tier 1	\$20 million	<i>No change</i>
Regulation A: Tier 2	\$50 million	\$75 million

* See [Capital Formation Proposal](#), Table 9

General Solicitation: Demo Days and Test-the-Waters Communications

	Current Rules	Proposed Rules
Demo Days	No specific rules regulating communications at demo days	New Rule 148: “Demo day” communications would not be deemed general solicitation or general advertising
Test-the-Waters	Issuers can only test-the-waters in registered and Reg A offerings (no other exemptions)	Two additional types of “test-the-waters”: <ul style="list-style-type: none"> • Issuer could use generic solicitation of interest materials to “test-the-waters” for an exempt offer prior to determining which exemption it will use for the sale • Reg Crowdfunding issuers could “test-the-waters” prior to filing an offering document with the SEC in a manner similar to Reg A

* See [Capital Formation Proposal](#), Section II.B.1 and II.B.2

Financial Disclosure Requirements for Non-Accredited Investors

	Current Rules	Proposed Rules
Rule 506(b) of Regulation D	Furnish specified information similar to a registered offering	Align with Reg A, based on offering amount
Regulation A	Furnish specified information, based on offering Tier	<i>No change**</i>
Regulation Crowdfunding	Furnish specified information, tiered to offering amount	<i>No change</i>

* See [Capital Formation Proposal](#), Section II.D

** For a discussion of the proposed amendments to simplify compliance with Reg A without a reduction in available investor disclosures, see [Capital Formation Proposal](#), Section II.D.3.

Crowdfunding Individual Investment Limits

	Current Rules	Proposed Rules
Regulation Crowdfunding	All investors: limits based on the lesser of an income or net worth standard	Accredited investors: no limits Non-Accredited Investors: limits based on the greater of an income or net worth standard
Regulation D	No limits	<i>No change</i>
Reg A: Tier 1	No limits	<i>No change</i>
Reg A: Tier 2	Accredited investors: no limits Non-Accredited Investors: limits based on the greater of an income or net worth standard	<i>No change</i>

* See [Capital Formation Proposal](#), Table 9

Crowdfunding and Regulation A Eligible Issuers

	Current Rules	Proposed Rules
Regulation Crowdfunding	Exclude special purpose vehicles	Permit special purpose crowdfunding vehicles
Regulation A	Exclude issuers that have not filed required reports in the two prior years under Regulation A	Exclude issuers that have not filed required reports in the two prior years under Regulation A or Section 13 or 15(d) of the Exchange Act

* See [Capital Formation Proposal](#), Table 10

Crowdfunding Eligible Securities

	Current Rules	Proposed Rules
Regulation Crowdfunding	No limits on types of securities	Align with Reg A
Regulation A	Securities limited to: <ul style="list-style-type: none"> • Equity securities • Debt securities • Securities convertible or exchangeable for equity interests • Guarantees of any of the above-listed securities 	<i>No change</i>

* See [Capital Formation Proposal](#), Table 10

Integration: General Principle

The general principle is a facts and circumstances test: no integration if the issuer establishes that each offering either complies with an exemption from registration or is registered.

If applying the principle:

To exempt offerings where general solicitation is not permitted:

The issuer must have a reasonable belief that the purchasers:
 (1) were not solicited through general solicitation; or
 (2) established a substantive relationship with the issuer prior to the commencement of the offering not permitting general solicitation.

To concurrent exempt offerings that each allow general solicitation:

If one of those offerings includes information about the material terms of the other concurrent offering → the offering materials must include the necessary legends for, and otherwise comply with, the requirements of each exemption.

* See [Capital Formation Proposal](#), Table 5

Integration: Non-Exclusive Safe Harbors

<p><i>Safe Harbor 1</i></p>	<p>No integration of an offering made more than 30 calendar days before the commencement of or after the completion of any other offering.</p> <p>Provided that: for an exempt offering for which general solicitation is not permitted, the purchasers were not solicited through general solicitation, or established a substantive relationship with the issuer prior to the commencement of that offering.</p>
<p><i>Safe Harbor 2</i></p>	<p>No integration of offers and sales made in compliance with Rule 701, pursuant to an employee benefit plan, or in compliance with Regulation S.</p>
<p><i>Safe Harbor 3</i></p>	<p>No integration of a registered offering made subsequent to:</p> <ul style="list-style-type: none"> (i) a completed offering for which general solicitation is not permitted; (ii) a completed offering for which general solicitation is permitted and made only to qualified institutional buyers (“QIBs”) and institutional accredited investors (“IAs”); or (iii) an offering that was completed more than 30 days prior to the registered offering.
<p><i>Safe Harbor 4</i></p>	<p>No integration of an exempt offering for which general solicitation is permitted if it is made after a completed offering.</p>

* See [Capital Formation Proposal](#), Table 5

Open Discussion of Other Topics Related to Capital Formation Proposal

Wrap-Up and Adjournment