



## SEC Attempts to Modernize How Businesses Raise Capital

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In 2017, new rules regarding certain exemptions from securities registration requirements are going into effect, adopted by the Securities and Exchange Commission (the “SEC”) on October 26, 2016 as the SEC attempts to *modernize* how businesses raise capital.

You should take note of these changes:

- Amendments to Rule 504 of Regulation D under the Securities Act. Previously, Rule 504 of Regulation D was an exemption from registration under the Securities Act, allowing for offerings of up to \$1 million in a 12-month period (with certain other restrictions and qualifications). The amended version of Rule 504 will maintain most of its previous provisions, except that it will now allow for an aggregate amount of securities to be sold up to \$5 million in a 12-month period, and will disqualify certain bad actors from participating in these Rule 504 offerings.
- Repeal of Rule 505 of Regulation D under the Securities Act. Due to the changes to Rule 504 of Regulation D, the SEC is repealing Rule 505, which allowed offerings up to \$5 million, to accredited investors and a certain number of non-accredited investors.
- Updates to existing Rule 147 and new intrastate offering exemption under Rule 147A. Section 3(a)(11) of the Securities Act of 1933 (the “Securities Act”) provides an intrastate offering exemption, and Rule 147 is its corresponding “safe harbor”. Rule 147 will remain mostly intact as the safe harbor pursuant to Section 3(a)(11), as this intrastate exemption corresponds with many state securities laws. The new Rule 147A is nearly identical to Rule 147, however it will permit offers to out-of-state residents and those entities incorporated or organized out-of-state (restricting only sales to the intrastate requirements) and it expressly permits any form of general solicitation and general advertising.

Other common provisions that you will see under both the amended Rule 147 and new Rule 147A: requiring that the issuer has its principal place of business in-state and is able to satisfy one of the “doing business” requirements; a new “reasonable belief” standard for issuers to rely upon when determining the residence of the offerees/purchasers; requiring issuers to obtain a written representation regarding the residency of its purchasers; imposing limits on resales to those persons residing in the state of the offering for a period of 6 months from the date of the sale; an integration safe harbor; and legend requirements to put offerees and purchasers on notice regarding the limits on resales.

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As stated by SEC Chair Mary Jo White in an SEC Press Release issued on October 26, 2016, “[t]hese final rules, while continuing to provide investor protections, update and expand the capital raising avenues for smaller companies, allowing them to more fully take advantage of changes in technology and business practices.”

The amendments to Rule 504 of Regulation D were effective on January 20, 2017; however, the repeal of Rule 505 of Regulation D will not go into effect until May 22, 2017. The amended Rule 147 and new Rule 147A will be effective on April 20, 2017.

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