SEC Proposes Rule Changes that Will Enable Entrepreneurs to Raise More Capital at Lower Costs

Article By
Mark T. Hiraide
Mitchell Silberberg & Knupp LLP
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This week, in a nearly 300-page release, the Securities and Exchange Commission proposed significant changes to its rules applicable to online equity crowdfunding and other securities offerings that are exempt from SEC registration.

These kinds of offerings generally are most advantageous to smaller and emerging companies that have limited funds to spend on raising capital. Last year, exempt securities offerings accounted for an estimated $2.7 trillion (69.2%) of new capital, compared to $1.2 trillion (30.8%) raised through SEC-registered offerings.

If adopted, the proposed changes will enable entrepreneurs to raise more capital through exempt offerings and simplify certain complex rules, thereby reducing legal costs associated with funding a business. The changes also will continue provisions to protect investors, especially individual retail investors.

The proposed changes increase the offering limits of exemptions from SEC registration. Congress created many of these exemptions, including equity crowdfunding, in the Jumpstart Our Business Startups Act of 2012. The proposed changes include:

- increasing the offering limit under Tier 2 of Regulation A from $50 million to $75 million;
• increasing the offering limit under Tier 1 of Regulation A from $15 million to $22.5 million;

• increasing the offering limit under Regulation Crowdfunding from $1.07 million to $5 million;

• increasing the offering limited under Rule 504 of Regulation D from $5 million to $10 million;

• permitting “test-the-waters” for exempt offerings; and

• allowing “demo day” solicitations for exempt offerings.

The SEC also is proposing to clarify very complex rules relating to the integration of offerings – the concept that separate sales of securities are deemed to be part of the same offering. In addition to reducing the complexity and cost of offerings, we believe that the proposed rules will encourage more retail investors to participate in public offerings conducted concurrently with institutional exempt offerings. That is good news for retail investors and U.S. business.

As SEC Chairman Jay Clayton explained, “[t]he complexity of the current framework is confusing for many involved in the process, particularly for those smaller companies whose limited resources spent on navigating our overly complex rules are diverted from direct investments in the companies’ growth. These proposals are intended to create a more rational framework that better allows entrepreneurs to access capital while preserving and enhancing important investor protections.”

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