

## MEMORANDUM

To: File No. S7-05-20 – Capital Formation Proposal, Release No. 33-10763

From: Office of the Advocate for Small Business Capital Formation

Date: March 20, 2020

RE: Overview Chart of Proposed Changes to the Capital-Raising Exemptions

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As part of our office's effort to encourage feedback from small businesses, their investors, and other small business marketplace participants on the impact of the Commission's [Capital Formation Proposal](#), our office created an overview chart, attached below, that illustrates several of the proposed changes to the exemptions from registration. For more information about the office see [www.sec.gov/oasb](http://www.sec.gov/oasb).

## Capital Formation Proposal: Overview of Current Capital-Raising Exemptions\*

Type of Offering	Offering Limit within 12-month Period	General Solicitation	Issuer Requirements	Investor Requirements	SEC Filing or Disclosure Requirements	Restrictions on Resale	Preemption of State Registration and Qualification
Section 4(a)(2)	None	No	None	Transactions by an issuer not involving any public offering. <i>See SEC v. Ralston Purina Co.</i>	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	Form D Disclosure requirements for companies offering to non-accredited investors that are similar to registered 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-the-waters permitted before and after the offering statement is filed	U.S. or Canadian issuers Excludes blank check companies, registered investment companies, business development companies, issuers of certain securities, certain issuers subject to a Section 12(j) order, and Regulation A issuers that haven’t filed certain required reports “Bad actor” disqualifications apply No asset-backed securities	None	Form 1-A, including two years of financial statements Exit report	No	No
Regulation A: Tier 2	\$50 million			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	Excludes 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)	\$1.07 million	Permitted with limits on advertising after Form C is filed Offering must be conducted on an internet platform through a registered intermediary	Excludes non-U.S. issuers, blank check companies, Exchange Act reporting companies, and investment companies “Bad actor” disqualifications apply	Investment limits based on the lesser 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)	Offerees 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 come to rest with in-state residents	No
Intrastate: Rule 147	No federal limit (generally, individual state limits between \$1 and \$5 million)	Offerees 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	No

\* This chart provides a summary of the most commonly used exemptions from registration.

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

Type of Offering	Offering Limit within 12-month Period	General Solicitation	Issuer Requirements	Investor Requirements	SEC Filing or Disclosure Requirements	Restrictions on Resale	Preemption of State Registration and Qualification
Section 4(a)(2)	None	No	None	Transactions by an issuer not involving any public offering. <i>See SEC v. Ralston Purina Co.</i>	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 <u>Align disclosure requirements for non-reporting companies offering to non-accredited investors with Regulation A offerings</u>	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-the-waters permitted before and after the offering statement is filed	U.S. or Canadian issuers Excludes blank check companies, registered investment companies, business development companies, issuers of certain securities, certain issuers subject to a Section 12(j) order, and Regulation A and reporting issuers that haven’t filed certain required reports “Bad actor” disqualifications apply No asset-backed securities	None	Form 1-A, including two years of financial statements Exit report	No	No
Regulation A: Tier 2	<u>\$75 million</u>			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	<u>\$10 million</u>	Permitted in limited circumstances	Excludes 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)	<u>\$5 million</u>	<u>Testing-the-waters permitted before a Form C is filed.</u> After a Form C is filed: - Permitted with limits on advertising - Offering must be conducted on an internet platform through a registered intermediary	Excludes non-U.S. issuers, blank check companies, Exchange Act reporting companies, and investment companies “Bad actor” disqualifications apply	<u>No investment limits for accredited investors</u> <u>Non-accredited investors are subject to investment limits based on the greater of annual income and net worth</u>	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)	Offerees 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 come to rest with in-state residents	No
Intrastate; Rule 147	No federal limit (generally, individual state limits between \$1 and \$5 million)	Offerees 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	No

\*\* 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 [release](#) for more details and to share your feedback!