

Amended Intrastate and Small Offering Exemptions to Take Effect in New Year

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Companies seeking to raise capital exclusively in-state or on a limited regional basis will have additional options in 2017. The **Securities and Exchange Commission (SEC)** recently adopted rules to modernize **Securities Act Rule 147**, the intrastate-offering safe harbor under Securities Act Section 3(a)(11), and the small-offering exemption under Rule 504 of **Regulation D**. In addition, the SEC adopted a new intrastate exemption, Rule 147A, that will permit offers (such as through Internet solicitations) to be accessible to out-of-state residents, and will allow utilization of the new rule by certain companies even though incorporated out of state. The amendments to Rule 147 and adoption of Rule 147A will provide additional methods for companies to raise capital through intrastate offerings, and the amendments to Rule 504 will increase the aggregate offering size from \$1 million to \$5 million in one or more states. A copy of the SEC's release and final rules is available [here](#).

The SEC elected to retain Rule 147 as an available intrastate exemption, with the following amendments to the current rule: 1) a "principal place of business" requirement will replace the "principal office" requirement of the old rule, coupled with a requirement that an issuer must satisfy at least one "doing business" requirement to be eligible as an intrastate business; 2) a "reasonable belief" standard will be required of issuers in determining residence of purchaser(s) at the time of sale; 3) issuers will be required to obtain a written representation from each purchaser as to residence; 4) a six-month limitation on resale to persons within the jurisdiction of the offering; 5) an integration safe harbor covering any prior offers or sales of securities by the issuer, as well as certain subsequent offers or sales of securities by the issuer occurring after the completion of an offering pursuant to Rule 147; and 6) legend requirements to offerees and purchasers about the limits on resales.

The SEC also adopted new Rule 147A, which will be substantially similar to amended Rule 147 with two major exceptions. First, Rule 147A, unlike Rule 147, will permit issuers to make offers accessible to out-of-state residents, so long as sales are limited to residents. In adopting this provision the SEC noted increased use of the Internet and electronic media and stated, "We believe that the most appropriate means to permit the offer and sale of securities on Internet websites, or using any other form of mass media likely to reach significant numbers of out-of-state residents, is to adopt a new intrastate offering exemption pursuant to the Commission's general exemptive authority. "Second, unlike Rule 147, Rule 147A will allow issuers to be incorporated out-of-state, so long as a "principal place of business" test is met within the relevant state of offering. The SEC noted, "[Rule 147A] will

rely solely on the principal place of business requirement to determine the state or territory in which the issuer shall be deemed a 'resident,' not only for corporate issuers, but for all issuers, including issuers that are not organized under any state or territorial law, such as general partnerships."

The SEC's amendments to Rule 504 under Regulation D will increase the aggregate value of securities that may be offered and sold under Rule 504 in any twelve-month period from \$1 million to \$5 million. Certain bad actors are disqualified from participating in Rule 504 offerings.

It is important to note that amended Rule 147, Rule 147A, and amended Rule 504 will each be subject to state-specific exemption and/or registration requirements. New Rule 147A and the amendments to Rule 147 go into effect on April 20, 2017. The amendments to Rule 504 take effect on January 20, 2017. Due to the changes to Rule 504, the SEC is repealing the now-duplicative Rule 505 effective May 22, 2017.

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