

SEC Finalizes Reg A Plus; State Law Preempted in Larger Tier of Offerings

BNA Snapshot

Key Development: The SEC finalizes its Regulation A Plus rules to expand exemptions for unregistered public offerings up to \$50 million.

Outlook: State securities laws are preempted for the larger tier of offerings, and a group of state securities regulators is evaluating its options.



By [Rob Tricchinelli](#)

March 25 — The Securities and Exchange Commission adopted a [rule](#) March 25 that will increase the allowable threshold for unregistered public offerings from \$5 million to \$50 million, broadening the rarely used Regulation A exemption from registration under the 1933 Securities Act.

In a unanimous vote, the SEC set the table for two tiers of offerings that can be sold without registration. State registration laws would be preempted for offerings made under the larger tier.

“Our goal in this rulemaking is to make Regulation A Plus an effective, workable path to raising capital that also provides strong investor protections,” SEC Chairman Mary Jo White said during the open meeting.

The rule implements Title IV of the Jumpstart Our Business Startups Act. It takes effect 60 days after being published in the Federal Register.

Two Tiers

The first tier includes offerings up to \$20 million per year with no more than \$6 million offered by affiliates of the issuer. Tier 2 includes offerings up to \$50 million over the course of a year with no more than \$15 million from affiliates.

For offerings up to \$20 million, issuers can proceed under either tier, but Tier 2 offerings will face extra requirements. Companies must provide audited financial statements and file ongoing disclosures, and are limited in how much they can sell to nonaccredited investors.

State Laws

The North American Securities Administrators Association opposed preemption of state oversight during the course of the rulemaking, saying the SEC can't adequately supervise such relatively small offerings over such a broad geographical area.

The \$20 million threshold is a compromise from the commission's Reg A Plus proposal, which set the preemption level at \$5 million ([244 SLD, 12/19/13](#)).

Preemption for Tier 2 offerings means issuers won't have to register in each state their securities are offered.

NASAA Program

NASAA said earlier this year that its coordinated review program for such offerings was available in 46 states ([30 SLD, 2/13/15](#)).

At the open meeting, White called the program “a very positive development,” but added that “it is a new program and at this stage concerns remain about the costs associated with state securities law registration and qualification requirements.”

NASAA President William Beatty said in a March 25 news release that “it appears that the SEC has adopted a rule that fails to

fully recognize the significant benefits of this program to issuers and investors alike.”

“We continue to have concerns that the rule does not maintain the important investor protection role of state securities regulators and must look more closely at the final rule as we evaluate our options,” Beatty said.

A group of six House Democrats on the Financial Services Committee, including Reps. Maxine Waters (D-Calif.) and Stephen Lynch (D-Mass.), said in a news release that the rule will “undermine critical investor protections with an unjustifiable preemption to state regulation.”

Commentary

The agency's vote was unanimous, but several commissioners tempered their enthusiasm and vowed to keep monitoring the issue.

Commissioner Daniel Gallagher [said](#) the \$50 million threshold suggested by Congress could have been higher. The SEC is slated to complete a study by April 2016 on whether that level is appropriate.

For the design of Tier 1 offerings, Commissioner Kara Stein [said](#) she is “concerned that this structure too closely mirrors the original Regulation A and still might not be utilized.”

“While I continue to review the details of the finalized rule I am encouraged the Commission has taken action on Reg A Plus,” Rep. Patrick McHenry (R-N.C.) said in a news release. “For too long the JOBS Act has been bogged down by Washington bureaucracy impeding the promise this law possesses.” McHenry introduced a package of legislation on capital formation in the previous Congress ([85 SLD, 5/2/14](#)).

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For More Information

For more on the rule, visit <http://www.sec.gov/news/pressrelease/2015-49.html>

For White's remarks, visit <http://www.sec.gov/news/statement/statement-at-open-meeting-on-rule-15b9-1-and-reg-a.html>