PHILLIPS NIZER LLP

LEGAL ALERT
Securities Law and Practice Updates

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SEC Adopts Amendments to Rules Governing Exemptions from Registration

On November 2, 2020, the Securities and Exchange Commission (the "SEC") adopted a number of significant amendments to the rules under the Securities Act of 1933, as amended (the "Securities Act"), which govern the manner in which securities may be sold without registration under the Securities Act. The amendments will be effective commencing on March 15, 2021.

The amendments generally:

- Modernize and simplify the Securities Act integration framework for registered and exempt offerings, which determines when multiple securities offering may viewed as a single offering for the purposes of determining compliance with the applicable securities law requirements;
- Set clear and consistent rules governing offering communications between issuers and investors, including rules permitting certain "demo day" communications and solicitations of non-binding indications of interest;
- Increase offering and investment limits for certain exemptions; and
- Harmonize certain disclosure requirements and bad actor disqualification provisions among various exemptions from registration.

We are able to provide counsel and guidance in SEC and New Mining Disclosure matters. For additional information, please contact the attorneys named below or the attorney with whom you have a primary relationship.

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The following Table summarizes key characteristics of the most commonly used exemptions from registration, as amended by the amendments.

Overview of SEC Capital-Raising Exemptions

Type of Offering	Offering Limit within 12-month Period	General Solicitation	Issuer Requirements	Investor Requirements	SEC Filing 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. *See SEC v. Ralston Purina Co.*	None	Yes. Restricted securities	No
17 CFR 230.506(b) ("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	17 CFR 239.500 ("Form D")	Yes. Restricted securities	Yes
17 CFR 230.506(c) ("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 Exchange Act reporting companies that have not filed certain required reports. "Bad actor" disqualifications apply* No asset-backed	None	Form 1-A, including two years of financial statements Exit report	No	No
Regulation A: Tier 2	$75 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

Type of Offering	Offering Limit within 12-month Period	General Solicitation	Issuer Requirements	Investor Requirements	SEC Filing Requirements	Restrictions on Resale	Preemption of State Registration and Qualification
			securities.				
Rule 504 of Regulation D	$10 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)	$5 million	Testing the waters permitted before Form C is filed 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	No investment limits for accredited investors Non-accredited investors are subject to investment limits based on the greater 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	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
	$1 and $5 million)						
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

Key elements of the final amendments are discussed below.

Integration

The integration doctrine seeks to prevent an issuer from improperly avoiding registration by artificially dividing a single offering into multiple offerings such that Securities Act exemptions would apply to the multiple offerings that would not be available for the combined offering. The Securities Act integration framework for registered and exempt offerings consists of a mixture of rules and SEC guidance for determining whether multiple securities transactions should be considered part of the same offering.

New Rule 152 provides a comprehensive integration framework composed of a general principle of integration, as set forth in new 17 CFR 230.152(a) ("Rule 152(a)"), and four safe harbors applicable to all securities offerings under the Securities Act, including registered and exempt offerings, as set forth in new 17 CFR 230.152(b) ("Rule 152(b)").

The following Tables provide an overview of the general integration principle and safe harbors in new Rule 152, each discussed in more detail below.

Overview of the General Integration Principle in New Rule 152

Integration Principle in New Rule 152(a)	
General Principle of Integration	If the safe harbors in Rule 152(b) do not apply, in determining whether two or more offerings are to be treated as one for the purpose of registration or qualifying for an exemption from registration under the Securities Act, offers and sales will not be integrated if, based on the particular facts and circumstances, the issuer can establish that each offering either complies with the registration requirements of the Securities Act, or that an exemption from registration is available for the particular offering.
Application of the General Principle to an exempt offering prohibiting general solicitation 17 CFR 230.152(a)(1) ("Rule 152(a)(1)")	The issuer must have a reasonable belief, based on the facts and circumstances, with respect to each purchaser in the exempt offering prohibiting general solicitation, that the issuer (or any person acting on the issuer's behalf) either: (i) Did not solicit such purchaser through the use of general solicitation; or (ii) Established a substantive relationship with such purchaser prior to the commencement of the exempt offering prohibiting general solicitation. [The SEC generally views a "pre-existing" relationship as one that the issuer has formed with an offeree prior to the commencement of the offering or, alternatively, that was established through another person (for example, a registered broker-dealer or investment adviser) prior to that person's participation in the offering. A "substantive" relationship is one in which the issuer (or a person acting on its behalf, such as a registered broker-dealer or investment adviser) has sufficient information to evaluate, and does, in fact, evaluate, an offeree's financial circumstances and sophistication, in determining his or her status as an accredited or sophisticated investor.]

Integration Principle in New Rule 152(a)	
Application of the General Principle to concurrent exempt offerings that each allow general solicitation 17 CFR 230.152(a)(2) ("Rule 152(a)(2)")	In addition to satisfying the requirements of the particular exemption relied on, general solicitation offering materials for one offering that include information about the material terms of a concurrent offering under another exemption may constitute an offer of the securities in such other offering, and therefore the offer must comply with all the requirements for, and restrictions on, offers under the exemption being relied on for such other offering, including any legend requirements and communications restrictions.

Overview of the Integration Safe Harbors in New Rule 152

Non-Exclusive Integration Safe Harbors in new Rule 152(b)	
Safe Harbor 1 17 CFR 230.152(b)(1) ("Rule 152(b)(1)")	Any offering made more than 30 calendar days before the commencement of any other offering, or more than 30 calendar days after the termination or completion of any other offering, will not be integrated with such other offering; provided that, for an exempt offering for which general solicitation is not permitted that follows by 30 calendar days or more an offering that allows general solicitation, the provisions of Rule 152(a)(1) shall apply.
Safe Harbor 2 17 CFR 230.152(b)(2) ("Rule 152(b)(2)")	Offers and sales made in compliance with Rule 701, pursuant to an employee benefit plan, or in compliance with 17 CFR 230.901 through 230.905 ("Regulation S") will not be integrated with other offerings.
Safe Harbor 3 17 CFR 230.152(b)(1) ("Rule 152(b)(3)")	An offering for which a Securities Act registration statement has been filed will not be integrated if it is made subsequent to: (i) a terminated or completed offering for which general solicitation is not permitted; (ii) a terminated or completed offering for which general solicitation is permitted that was made only to qualified institutional buyers ("QIBs") and institutional accredited investors ("IAIs"); or (iii) an offering for which general solicitation is permitted that terminated or completed more than 30 calendar days prior to the commencement of the registered offering. See 17 CFR 230.144(a)(1) for the definition of "qualified institutional buyer," and 17 CFR 230.501(a)(1), (2), (3), (7), (8), (9), (12), and (13) for a list of entities that are considered "institutional accredited investors."
Safe Harbor 4 17 CFR 230.152(b)(1)("Rule 152(b)(4)")	Offers and sales made in reliance on an exemption for which general solicitation is permitted will not be integrated if made subsequent to any terminated or completed offering.

General Solicitation and Offering Communications

Rule 148—Demo Day Communications

Many (but not all) exemptions from registration such as Rule 506(b) of Regulation D and Section 4(a)(2) of the Securities Act, are conditioned on the issuer not engaging in any general solicitation or general advertising in connection with the offering. The Securities Act defines, and the SEC historically has interpreted, the term "offer" broadly. The SEC has taken the position that the publication of information and publicity efforts, made in advance of a proposed financing which have the effect of conditioning the public mind or arousing public interest in the issuer or in its securities constitutes an offer.

Although the terms "general solicitation" and "general advertising" are not defined in Regulation D, 17 CFR 230.502(c) ("Rule 502(c)") does provide examples of general solicitation and general advertising, including advertisements published in newspapers and magazines, communications broadcast over television and radio, and seminars where attendees have been invited by general solicitation or general advertising. The SEC has stated that other uses of publicly available media, such as unrestricted websites, also constitute general solicitation and general advertising.

The SEC has adopted new Rule 148 to provide that certain "demo day" (generally an investor conference sponsored by various organizations in which multiple companies make presentations to investors) communications will not be deemed general solicitation or general advertising. Specifically, an issuer will not be deemed to have engaged in general solicitation if the communications are made in connection with a seminar or meeting sponsored by a college, university, or other institution of higher education, a State or local government or instrumentality of a State or local government, a nonprofit organization, or an angel investor group, incubator, or accelerator.

> Under Rule 148, the sponsor will not be permitted to:
>
> Make investment recommendations or provide investment advice to attendees of the event;
>
> Engage in any investment negotiations between the issuer and investors attending the event;
>
> Charge attendees of the event any fees, other than reasonable administrative fees;
>
> Receive any compensation for making introductions between event attendees and issuers, or for investment negotiations between the parties; or
>
> Receive any compensation with respect to the event that would require it to register as a broker or dealer under the Exchange Act, or as an investment adviser under the Advisers Act.

In addition, the advertising for the event may not reference any specific offering of securities by the issuer.

Rule 148 limits online participation in the event to: (a) individuals who are members of, or otherwise associated with the sponsor organization (for example, members of an angel investor group or students, faculty, or alumni of a college or university); (b) individuals that the sponsor reasonably believes are accredited investors; or (c) individuals who have been invited to the event by the sponsor based on industry or investment-related experience reasonably selected by the sponsor in good faith and disclosed in the public communications about the event.

In addition, under new Rule 148, there are limitations on the type of information that an issuer may disclose concerning a proposed securities offering. The issuer is allowed to convey only:

Notification that the issuer is in the process of offering or planning to offer securities;

The type and amount of securities being offered;

The intended use of the proceeds of the offering; and

The unsubscribed amount in an offering.

Rule 241--Solicitations of Interest

The SEC has adopted new Rule 241 to permit an issuer to use generic solicitation of interest materials for an offer of securities prior to a making a determination as to the exemption under which the offering may be conducted. New Rule 241 exempts the class of persons who are issuers and use generic solicitation of interest materials pursuant to the conditions of the rule from the prohibitions on offers prior to filing a registration statement in Section 5(c) of the Securities Act. Rule 241 does not permit an issuer to identify the specific exemption from registration on which it intends to rely for a subsequent offer and sale of the securities.

Under new Rule 241, an issuer or any person authorized to act on behalf of an issuer may communicate orally or in writing to determine whether there is any interest in a contemplated offering of securities exempt from registration under the Securities Act. The rule provides an exemption from registration only with respect to the generic solicitation of interest and the solicitation will be deemed to be an offer of a security for sale for purposes of the antifraud provisions of the Federal securities laws. In addition, no solicitation or acceptance of money or other consideration, nor of any commitment, binding or otherwise, from any person is permitted until the issuer makes a determination as to the exemption on which it will rely and commences the offering in compliance with the exemption.

If the issuer moves forward with an exempt offering following the generic solicitation of interest, it will be required to comply with an applicable exemption for the subsequent offering, and investors will have the benefit of the investor protections included in such exemption.

If the generic solicitation is done in a manner that would constitute general solicitation, and the issuer ultimately decides to conduct an unregistered offering under an exemption that does not permit general solicitation, the issuer will need to analyze whether that solicitation and the subsequent private offering will be integrated, thereby making unavailable an exemption that does not permit general solicitation. Under the new integration rules, an issuer will not be able to follow a generic solicitation of interest that constituted a general solicitation with an offering pursuant to an exemption that does not permit general solicitation, such as Rule 506(b), unless the issuer has a reasonable belief, based on the facts and circumstances, with respect to each purchaser in the exempt offering prohibiting general solicitation, that the issuer (or any person acting on the issuer's behalf) either did not solicit such purchaser through the use of general solicitation or established a substantive relationship with such purchaser prior to the commencement of the exempt offering prohibiting general solicitation.

Rule 241 further requires the generic testing-the-waters materials to provide specified disclosures notifying potential investors about the limitations of the generic solicitation. The issuer's communications must state that:

> The issuer is considering an offering of securities exempt from registration under the Act, but has not determined a specific exemption from registration the issuer intends to rely on for the subsequent offer and sale of the securities;
>
> No money or other consideration is being solicited, and if sent in response, will not be accepted;
>
> No offer to buy the securities can be accepted and no part of the purchase price can be received until the issuer determines the exemption under which the offering is intended to be conducted and, where applicable, the filing, disclosure, or qualification requirements of such exemption are met; and
>
> A person's indication of interest involves no obligation or commitment of any kind.

The rule additionally provides that the communication may include a means for a person to indicate interest in a potential offering and an issuer may require such indication to include the person's name, address, telephone number, and/or email address. We are adopting these provisions as proposed as commenters were generally supportive of this aspect of Rule 241, providing no recommendation to further revise these requirements.

In addition, the SEC adopted amendments to Regulation A and Regulation Crowdfunding to require that the Rule 241 generic solicitation materials be made publicly available as an exhibit to the offering materials filed with the SEC if the Regulation A or Regulation Crowdfunding offering is commenced within 30 days of the generic solicitation.

New Rule 241 also requires that an issuer provide purchasers with any written generic solicitation of interest materials used under new Rule 241 if the issuer sells securities under Rule 506(b) within 30 days of the generic solicitation of interest to any purchaser that is not an accredited investor.

Regulation Crowdfunding

Rule 255 of Regulation A permits an issuer to test the waters prior to filing the offering statement with the SEC. In contrast to Regulation A, an issuer conducting an offer pursuant to Regulation Crowdfunding currently may not solicit interest or make offers or sales under Regulation Crowdfunding prior to filing a Form C with the SEC.

The SEC has adopted new Rule 206 to permit Regulation Crowdfunding issuers to test the waters orally or in writing prior to filing a Form C with the SEC. New Rule 206 permits issuers to test the waters with all potential investors. Like Rule 255, Rule 206 requires issuers to include legends in the testing-the-waters materials. Specifically, Rule 206 requires issuers to state that: (1) no money or other consideration is being solicited, and if sent, will not be accepted; (2) no offer to buy the securities can be accepted and no part of the purchase price can be received until the offering statement is filed and only through an intermediary's platform; and (3) a prospective purchaser's indication of interest is non-binding. These testing-the-waters materials would be considered offers that are subject to the antifraud provisions of the Federal securities laws. Rule 201(z) has been amended to require issuers to include any Rule 206 solicitation materials with the Form C that is filed with the SEC.

Unlike Rule 255 of Regulation A, which permits issuers to use testing-the-waters materials both before and after the filing of the offering statement with the SEC, Rule 206 will only permit issuers to use testing-the-waters materials before the Form C is filed. Once the Form C is filed, any offering communications are required to comply with the terms of Regulation Crowdfunding, including the Rule 204 advertising restrictions.

Other Regulation Crowdfunding Offering Communications

Under the current rules, an issuer may not advertise the terms of a Regulation Crowdfunding offering outside of the intermediary's platform except in a notice that directs investors to the intermediary's platform and is limited to the information enumerated in Rule 204 of Regulation Crowdfunding. An issuer may communicate with investors and potential investors about the terms of the offering through communication channels provided on the intermediary's platform.

The amendments permit oral communications with prospective investors once the Form C is filed, so long as the communications comply with the requirements of Rule 204. In addition, Rule 204 has been amended to provide that a link to the intermediary's platform is only required to be provided when the communications are in writing. The amendments also expand the information that an issuer may provide in accordance with Rule 204 to include:

A brief description of the planned use of proceeds of the offering; and

Information on the issuer's progress toward meeting its funding goals.

The amendments add a new Rule 204(d) to specify that an issuer may provide information about the terms of an offering under Regulation Crowdfunding in the offering materials for a concurrent offering, such as in an offering statement on Form 1-A for a concurrent Regulation

A offering or a Securities Act registration statement filed with the SEC, without violating Rule 204. To do so, the information provided about the Regulation Crowdfunding offering must be in compliance with Rule 204, including the requirement to include a link directing the potential investor to the intermediary's platform as required by Rule 204(b)(1). However, in accordance with the SEC's rules with respect to the use of hyperlinks in electronic filings, such link may not be a live hyperlink.

Rule 506(c) Verification Requirements

Rule 506(c) permits issuers to generally solicit and advertise an offering, provided that all purchasers in the offering are accredited investors, the issuer takes reasonable steps to verify that purchasers are accredited investors, and certain other conditions in Regulation D are satisfied. Rule 506(c) provides a principles-based method for verification of accredited investor status as well as a non-exclusive list of verification methods. The principles-based method of verification requires an objective determination by the issuer (or those acting on its behalf) as to whether the steps taken are "reasonable" in the context of the particular facts and circumstances of each purchaser and transaction. Rule 506(c) includes a non-exclusive list of verification methods that issuers may use, but are not required to use, when seeking to satisfy the verification requirement with respect to natural person purchasers.

The amendments permit an issuer to establish that an investor that the issuer previously took reasonable steps to verify as an accredited investor in accordance with Rule 506(c)(2)(ii) remains an accredited investor as of the time of a subsequent sale if the investor provides a written representation that the investor continues to qualify as an accredited investor and the issuer is not aware of information to the contrary, subject to a five year time limit.

Harmonization of Disclosure Requirements

Currently, the exempt offerings rules provide different financial statement information requirements for Regulation A and Regulation D. Additionally, in some areas compliance with Regulation A is more complex or difficult than for registered offerings, such as with respect to the rules regarding redaction of confidential information in material contracts and incorporation by reference.

The SEC has adopted amendments to Rule 502(b)'s requirements governing the financial information that non-reporting companies must provide to non-accredited investors participating in Regulation D offerings to align with the financial information that issuers must provide investors in Regulation A offerings. Specifically, for Regulation D offerings of $20 million or less, new Rule 502(b)(2)(i)(B)(*1*) refers such issuers to paragraph (b) of part F/S of Form 1-A, which applies to Tier 1 Regulation A offerings. For offerings of greater than $20 million, new Rule 502(b)(2)(i)(B)(*2*) refers issuers to paragraph (c) of part F/S of Form 1-A, which applies to Tier 2 Regulation A offerings. This amendment eliminates the current Rule 502(b) provisions that permit an issuer, other than a limited partnership, that cannot obtain audited financial statements without unreasonable effort or expense, to provide only the issuer's audited balance sheet.

In addition, under the amendments, a foreign private issuer that is not an Exchange Act reporting company will be required to provide financial statement disclosure consistent with the Regulation A requirements. The foreign private issuer will be permitted to provide financial statements prepared in accordance with either U.S. GAAP or International Financial Reporting Standards as issued by the International Accounting Standards Board. For business combinations and exchange offers, an issuer that is not an Exchange Act reporting company will provide financial statements consistent with the Regulation A requirements.

Amendments to Simplify Compliance with Regulation A

In its review of the exempt offering framework, the SEC identified several areas where compliance with Regulation A is more complex or difficult than for registered offerings, including the rules regarding the redaction of confidential information in material contracts, making draft offering statements public on EDGAR, incorporation by reference, and the abandonment of a post-qualification amendment.

Redaction of Confidential Information in Certain Exhibits

In March 2019, the SEC amended several rules to permit registrants to file redacted material contracts and plans of acquisition, reorganization, arrangement, liquidation, or succession without applying for confidential treatment. These rules require registrants to mark the exhibit index to indicate that portions of the exhibit or exhibits have been omitted, include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both not material and would be competitively harmful if publicly disclosed, and indicate with brackets where the information has been omitted from the filed version of the exhibit. The SEC has adopted the amendments to Item 17 of Form 1-A to allow Regulation A registrants to follow similar procedures.

Amendment to Form 1-A Item 17.16(a) Requirement

Issuers that are conducting Regulation A offerings are permitted to submit non-public draft offering statements and amendments for review by the SEC staff if they have not previously sold securities pursuant to (i) a qualified offering statement under Regulation A or (ii) an effective Securities Act registration statement. Such issuers also may submit related non-public correspondence to the Commission staff for review confidentially. Current rules require that these non-public offering statements, amendments and correspondence be filed as an exhibit to a publicly filed offering statement at least twenty-one calendar days prior to the qualification of the offering statement. Similarly, an emerging growth company may, prior to its initial public offering date, submit a draft registration statement and amendments to the SEC for non-public review by the staff. However, unlike issuers submitting Regulation A offering statements for non-public review, there is no corresponding Securities Act rule or item requiring registration statements and amendments confidentially submitted by emerging growth companies to be filed as an exhibit to a publicly filed registration statement. Instead issuers satisfy their public filing requirement by logging into their EDGAR account, selecting materials previously submitted non-publicly, and releasing them for public dissemination. The

SEC has adopted amendments to amend Item 17.16(a) of Form 1-A to allow Regulation A issuers to follow similar procedures.

Incorporation by Reference of Previously Filed Financial Statements in Form 1-A for Regulation A Offerings

The ability to incorporate financial statements by reference to Exchange Act reports filed before the effective date of a registration statement is permitted on Form S-1, subject to certain conditions. Specifically, General Instruction VII of Form S-1 permits registrants that meet certain eligibility standards to incorporate by reference the information required by Item 11 of Form S-1, which includes information about the registrant, such as, among other things, financial statement information meeting the requirements of 17 CFR 210.1-01 through 12-29. Regulation A issuers, however, are required to include the issuer's financial statements, prepared in accordance with the applicable requirements of Tier 1 or Tier 2 of Regulation A, in their Regulation A offering circular that is distributed to investors. The SEC has adopted amendments to Regulation A to provide similar incorporation by reference.

Confidential Information Standard

The current requirements for registrants to file material contracts as exhibits to their disclosure documents permit registrants to redact provisions or terms of exhibits required to be filed if those provisions or terms are both (i) not material and (ii) would likely cause competitive harm to the registrant if publicly disclosed. In June 2019, the Supreme Court adopted a new definition of "confidential" that does not include a competitive harm requirement. The Supreme Court stated that "[a]t least where commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is 'confidential' within the meaning of Exemption 4."

The SEC has adopted amendments to adjust the exhibit filing requirements by removing the competitive harm requirement and replacing it with a standard that permits information to be redacted from material contracts if it is the type of information that the issuer both customarily and actually treats as private and confidential, and which is also not material.

Offering and Investment Limits

Regulation A, Regulation Crowdfunding, and Rule 504 of Regulation D contain a variety of requirements and investor protections, including limits on the amount of securities that may be offered and sold under the exemptions. Regulation A and Regulation Crowdfunding also include limits on how much an individual may invest. The SEC has adopted increased offering limits for certain of its exemptions, which are reflected in the Table of exemptions at the beginning of this Legal Alert.

Regulation Crowdfunding Eligible Issuers

Section 4A(f)(3) of the Securities Act prohibits investment companies, as defined in the Investment Company Act (or companies that are excluded from the definition of an

investment company under section 3(b) or 3(c) of the Investment Company Act), from using the Regulation Crowdfunding exemption.

The SEC has adopted Rule 3a-9 under the Investment Company Act to exclude from the definition of "investment company" under that Act a crowdfunding vehicle that meets certain conditions designed to require that it function as a conduit for investors to invest in a business that seeks to raise capital through a crowdfunding vehicle.

For additional information concerning the Amendments, see the SEC's Adopting Release at: https://www.sec.gov/rules/final/2020/33-10884.pdf.