

SEC ASKS 138 QUESTIONS IN CONCEPT RELEASE ON OVERHAULING SECURITIES OFFERING EXEMPTIONS

Date: 19 June 2019

Capital Markets Alert

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On June 18, 2019, the U.S. SEC published a concept release ([Release No. 33-10649](#)) (the "Harmonization Release") requesting comments on whether and how the U.S. regulatory framework for offerings of securities that are exempt from registration under the Securities Act of 1933 (the "Securities Act") should be simplified, improved, and/or harmonized. The SEC generally issues "concept releases" to solicit public comment on broader securities law issues, and uses the related feedback to inform its rulemaking process. The Harmonization Release contains 138 specific requests for comment (yes, really, **138!**), most containing numerous sub-requests, covering nearly all aspects of exempt securities offerings (including exemptions for unregistered resales of securities). While we can expect that a large number of well-reasoned public comments will be submitted to the SEC for consideration, we also expect that it will take the SEC a significant amount of time to take any rulemaking action on them. Nonetheless, we are encouraged that the SEC is hearing the pain of companies and investors involved in unregistered securities offerings.

In the United States, every offering of securities must either be registered under the Securities Act or exempt from registration in order for the offering not to violate the law. An enormous amount of capital is raised in the United States in exempt offerings (approximately \$2.9 trillion in 2018 according to the Harmonization Release), far exceeding the amount raised in registered offerings under the Securities Act (approximately \$1.4 trillion in 2018 according to the Harmonization Release). The vast majority of money raised in exempt offerings is from investors that would qualify as "accredited" (primarily wealthy individuals and entities), with only a tiny fraction from "non-accredited" investors. The Securities Act exemptions under which exempt offerings are conducted have evolved over time and have not generally been part of any consistent regulatory framework, leaving potential gaps in, and excluding certain issuers and investors from, the capital formation process.

With the Harmonization Release, the SEC appears to be considering a more cohesive and efficient regime for regulating the exempt offering ecosystem than has existed in the United States to date. While the full range of questions the SEC has asked far exceed the scope of this blog entry, some specific SEC requests include (i) whether the existing exemptions "appropriately address capital formation and investor protection considerations," (ii) whether the current regulatory framework is "too complex," (iii) if rule changes should be implemented to make exempt offerings "more accessible" to a broader range of investors, and (iv) if steps should be taken to "improve secondary trading liquidity" of exempt securities. Public comments on the Harmonization Release will be due within 90 days of its publication in the Federal Register. Please contact us if you are interested in assistance in

submitting a comment letter to the SEC in response to any of the requests in the Harmonization Release.

Practitioner's Note: The Harmonization Release contains valuable data about capital market trends on pages 18-21, as well as a helpful chart of securities law exemptions on pages 10-11. See: [Harmonization Release](#).

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