

PUBLICATION UPDATE

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Federal Securities Exchange Act of 1934

and related publications
Federal Securities Act of 1933
Securities Primary Law Sourcebook

Publication 619 Release 133

March 2019

HIGHLIGHTS

Federal Securities Act of 1933

- Chapter 5, Limited Offering Exemptions under Sections 3(b) and 3(c) of the Securities Act

Federal Securities Exchange Act of 1934

- Chapter 1, The Securities Exchange Act of 1934 and the SEC

Securities Primary Law Sourcebook

- Volumes A, B, D, and E have been revised and updated.

Federal Securities Act of 1933. Chapter 5, Limited Offering Exemptions under Sections 3(b) and 3(c) of the Securities Act—In this Release, Chapter Five has been retitled as “Limited Offering Exemptions under Sections 3(b) and 3(c) of the Securities Act” to reflect the substantial

increase in the maximum offering amount permitted under “Regulation A” from its original \$5 million limitation to \$50 million today. Expanded Regulation A, popularly dubbed “Regulation A+,” is technically an “exempt” offering under Section 3(b) of the Securities Act, now specifically Section 3(b)(2), newly added in 2012 as part of the JOBS Act. Although exempt from registration requirements of Section 5 of the Securities Act, Regulation A offerings are in fact limited public offerings subject to specific regulatory and offering requirements presented in Chapter Five. Other “exempt” offerings under Section 3(b), now Section 3(b)(1), are subject to the original \$5 million maximum offering amount limitation. With some reorganization made for clarity, Chapter Five continues to explain these exemptions, namely Rule 504 of Regulation D under the Securities Act, Rule 701, relating to offerings associated with com-

pensatory benefit plans, and the specialized exemptions in Rule 236 and “Regulation CE.” Securities Act Section 3(c), and the “Regulation E” exemption for limited offerings by Small Business Investment Companies and Business Development Companies based on it, likewise continues as an important part of Chapter Five.

Chapter Five has been expanded throughout with the addition of numerous SEC Staff Compliance and Disclosure Interpretations (“CD & I’s”), which address questions raised in the application of the Section 3(b) and 3(c) exemptions and supply specific interpretive guidance. Several CD & I’s, for example, have been added in regard to offerings pursuant to Regulation A. Important guidance on solicitations of interest is now available to address forms of electronic communication used in the process. Specific guidance addresses the question whether an issuer may solicit interest in a Regulation A offering on a platform that limits the number of characters or amount of text that can be included. Staff guidance makes clear that issuers may hyperlink to the full information required to be included in a solicitation of interest communication.

CD & I guidance on Regulation A offerings is also added in Chapter Five regarding the omission of financial information in an issuer’s Form 1-A Offering Statement. Guidance on required financial information in Regulation A offerings by an “Emerging Growth Company” has been added. Form requirements for post-qualification amendments to Form 1-A are updated, and other technical issues affecting revised price information and the need for post-qualification amendment of an Offering Statement are addressed. Guidance on the availability of Regulation A for securities distributions involved in business combination transactions has been added.

Chapter Five includes updated clarifying information regarding the application of Rule 701, for limited offerings pursuant to compensatory benefit plans, and Rule 236, the exemption for securities publicly offered to raise funds for distribution to security holders in lieu of issuing fractional shares, scrip certificates, order forms, or other evidences of fractional interests, in connection with stock dividends, stock splits, conversions, and other similar transactions. The updated discussion of Rule 701 includes clarification on the requirements for sales of stock to “consultants and advisers” for services.

Securities Act Section 3(c) is the statutory basis for Regulation E, which provides an exemption for offerings of securities of qualifying small business investment companies. Specific filing requirements are nevertheless involved in Regulation E offerings, and updated Chapter Five includes updated attention to administrative enforcement actions impacting issuers that fail to file certain required reports. Information regarding enforcement acts specifically directed at issuers who fail to file required Offering Status Reports in connection with Regulation E offerings has been added in Chapter Five. Updated information on enforcement actions has also been added in regard to issuers offering prohibited securities under Regulation D or violating other elements of the federal securities laws.

Federal Securities Exchange Act of 1934. Chapter 1, *The Securities Exchange Act of 1934 and the SEC*—contains a description of all congressional acts that amend the Federal securities laws, including amendments contained in the Jumpstart Our Business Startups Act of 2012 (“JOBS Act”), the Fix America’s Surface Transportation Act of 2015 (“FAST Act”), SEC Small Business Advocate Act, Fair Access to Investment Research Act of 2017

(“FAIR Act”), Small Business Credit Availability Act, Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 and recent SEC regulations implementing these new or amended provisions. It also includes descriptions of the organizational structure of the SEC, including several new offices and the reassignment of responsibilities to these offices. The chapter also describes the functional processes used

by the Commission to implement its authority.

Securities Primary Law Sourcebook.

Statutes in Volumes A, B, and E are current through Pub. L. 115-269, October 16, 2018 except Pub. L. 115-254. Federal regulations in Volumes A, B, D, and E are current through Federal Register of November 21, 2018.

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Publication 619 Release 133

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