

Also Visit – [LawCast.com](http://LawCast.com)  
*The Securities Law Network*

December 1, 2015



## **SEC Proposes Amendments Related To Intrastate And Regional Securities Offerings- Part II- Rules 504 And 505**

The following is written by Laura Anthony, Esq., a going public attorney focused on OTC listing requirements, direct public offerings, going public transactions, reverse mergers, Form 10 and Form S-1 registration statements, SEC compliance and OTC Market reporting requirements.

On October 30, 2015, the SEC published proposed rule amendments to facilitate intrastate and regional securities offerings. The SEC has proposed amendments to Rule 147 to modernize the rule and accommodate adopted state intrastate crowdfunding provisions. In addition, the SEC has proposed amendments to Rule 504 of Regulation D to increase the aggregate offering amount from \$1 million to \$5 million and to add bad actor disqualifications from reliance on the rule. The SEC has also made technical amendments to Rule 505 of Regulation D.

In Part I of the blog, I discussed the Rule 147 amendment, and in this Part II will discuss the changes to Rules 504 and 505. I have never really written about either Rules 504 or 505 in the past, the simple reason being that they are rarely used exemptions. Perhaps with the current proposed changes, Rule 504 will have a new life. I do not think Rule 505 will gain favor, and in fact, as part of the rule release the SEC is seeking comment as to whether Rule 505 should simply be eliminated.

## Overview

Currently Rule 504 of Regulation D provides an exemption from registration for offers and sales up to \$1 million in securities in any twelve-month period. Current Rule 504, like Regulation A/A+, is unavailable to companies that are subject to the reporting requirements of the Securities Exchange Act, are investment companies or blank check companies. Moreover, current rule 504 prohibits the use of general solicitation and advertising unless the offering is made (i) exclusively in one or more states that provide for the registration of the securities and public filing and delivery of a disclosure document; or (ii) in one or more states that piggyback on the registration of the securities in another state and they are so registered in another state; or (iii) exclusively according to a state law exemption that permits general solicitation and advertising so long as sales are made only to accredited investors (i.e., a state version of the federal 506(c) exemption).

Rules 504, 505 and 506 together comprise Regulation D. Rule 506 is promulgated under Section 4(a)(2) of the Securities Act and preempts state law. Rules 505 and 506 are promulgated under Section 3(b) of the Securities Act and do not preempt state law. Currently Rules 505 and 506 have bad actor disqualification provisions but Rule 504 does not.

The vast majority of states require the registration of Rule 504 offerings. Rule 504 is similar to the Intrastate Offering found in Section 3(a)(11) in that on the federal level it defers to state legislation and oversight. In fact, of the 29 states that have recently passed state-based crowdfunding exemptions, Maine specifically allows an issuer to rely on Rule 504 in utilizing its crowdfunding provisions.

As Rule 504 is in essence a deferral to the states for small offerings, the SEC is of the position that it does not warrant imposing extensive regulation on the federal level. I agree. As stated by the SEC, the purpose of Rule 504 is to assist small businesses in raising seed capital by allowing offers and sales of securities to an unlimited number of persons regardless of their level of sophistication – provided, however, that the offerings remain subject to the federal anti-fraud provisions and general solicitation and advertising is prohibited unless sales are limited to accredited investors.

## Proposed Amendments

The SEC has proposed to increase the amount of securities that may be offered and sold in reliance on Rule 504 to \$5 million in any 12-month period, and to add bad actor disqualification provisions to the rule. The SEC believes the change will help facilitate capital formation and give states greater flexibility in developing state-coordinated review programs for multi-state registrations. The proposed rule also corrects the technical reference to Section 3(b) of the Securities Act in the current Rules 504 and 505 to Section 3(b)(1), which change was made by the JOBS Act in 2012.

The proposed bad actor disqualification provisions are substantially the same as those in place for Rule 506 offerings. For a review of the Rule 506 bad actor disqualification provisions, see my blog [HERE](#).

## The Author

Attorney Laura Anthony  
Founding Partner  
Legal & Compliance, LLC  
Corporate, Securities and Going Public Attorneys  
LAnthony@LegalAndCompliance.com

Securities Law Blog is written by Laura Anthony, Esq., a going public lawyer focused on OTC Listing Requirements, Direct Public Offerings, Going Public Transactions, Reverse Mergers, Form 10 Registration Statements, and Form S-1 Registration Statements. Securities Law Blog covers topics ranging from SEC Compliance, FINRA Compliance, DTC Chills, Going Public on the OTC, and OTCQX and OTCQB Reporting Requirements. Ms. Anthony is also the host of LawCast.com, the securities law network.

Contact Legal & Compliance, LLC. Inquiries of a technical nature are always encouraged. Follow me on Facebook, LinkedIn, YouTube, Google+, Pinterest and Twitter.

Download our mobile app at iTunes and Google Play.

## Disclaimer

Legal & Compliance, LLC makes this general information available for educational purposes only. The information is general in nature and does not constitute legal advice. Furthermore, the use of this information, and the sending or receipt of this information, does not create or constitute an attorney-client relationship between us. Therefore, your communication with us via this information in any form will not be considered as privileged or confidential.

This information is not intended to be advertising, and Legal & Compliance, LLC does not desire to represent anyone desiring representation based upon viewing this information in a jurisdiction where this information fails to comply with all laws and ethical rules of that jurisdiction. This information may only be reproduced in its entirety (without modification) for the individual reader's personal and/or educational use and must include this notice.

© Legal & Compliance, LLC 2015