

Expanding Horizons for Startup and Small Companies Raising Capital

By ***Ashley E. Gault***, Associate

If you are a startup or small company looking to raise funds from investors, newly amended Rule 504 should catch your eye. Effective January 20, 2017, Rule 504 of Regulation D will allow startups and small companies to sell securities in an amount up to \$5 million in any 12-month period before having to register. For many startups and small companies, the cost of registering the offer and sale of securities under the Securities Act are simply not within the realm of possibility. According to the U.S. Securities and Exchange Commission (“SEC”), initial compliance costs average \$2.5 million for an initial public offering. This means that the only option is to qualify for an available exemption from registration. Even with the exemption from registration, the SEC has not adjusted the limit on the amount that can be raised within a 12-month period since 1988, limiting startups and small companies to raise no more than \$1 million within a 12-month period.

The SEC believes the increased \$5 million limit will facilitate companies’ ability to raise capital and will encourage states to have regional coordinated review programs that are designed to increase efficiencies associated with the registration of securities without increasing risks to investors. Some commentators have expressed hope that the new rule will encourage new regional approaches to crowdfunding and other small business offerings, and thereby improve capital formation in the larger economy.

In a press release, SEC Chair Mary Jo White said, “These final rules, while continuing to provide investor protections, update and expand the capital raising avenues for smaller companies, allowing them to more fully take advantage of changes in technology and business practices.”

It should be noted that Rule 504 also disqualifies certain bad actors from qualifying for its exemption. The intention is to create a uniform set of bad actor triggering events across the various exemptions from registration, simplifying due diligence and thereby lowering costs for companies that may engage in different types of exempt offerings.

If you are considering raising funds from investors for your company, then you may want to consider if this exemption is right for you. Roetzel has experience in assisting companies and investors with these SEC requirements. Please contact one of the listed attorneys if you have any questions about the process.

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