

Issuers of Digital Securities May Benefit from Proposed Changes to Regulation A

Blockchain and the Law Blog on May 30, 2020

In March, the Securities and Exchange Commission (SEC) announced proposed rule [amendments](#) to “harmonize, simplify, and improve the exempt offering framework to promote capital formation and expand investment opportunities while preserving and enhancing important investor protections,” which may increase the viability of conducting issuances of digital securities. Under the Securities Act of 1933, every offer and sale of securities must either be registered with the SEC or qualify for an exemption from the SEC’s registration requirements. Where appropriate, an offering conducted pursuant to the exempt offering framework may be more efficient and less expensive than a registered offering. The SEC’s proposed amendments aim to facilitate such efficiency, by “[addressing] gaps and complexities in the exempt offering framework that may impede access to investment opportunities for investors and access to capital for issuers.”

In the proposed rule are certain amendments to Regulation A, which the SEC updated in 2015 with “Regulation A+” amendments pursuant to the Jumpstart Our Business Startups Act of 2012. The “Regulation A+” amendments were intended to offer an exemption for small issuances, providing startups and small firms an easier way to raise funds from investors, and established a two-tiered framework for Regulation A offerings. Under Tier 1, issuers may offer and sell up to \$20 million of securities over twelve months. Under Tier 2, issuers may offer and sell up to \$50 million of securities over twelve months, subject to ongoing reporting obligations.

Last year, the SEC qualified the first [Regulation A offering](#) of blockchain-native digital assets: [Blockstack PBC](#) raised more than \$23 million through its qualified offering under Regulation A and its offering to non-U.S. investors under Regulation S. Offering digital assets pursuant to Regulation A provides certain benefits to issuers. For example:

- Securities offered and sold under the exemption are not “restricted securities.” Therefore, digital assets purchased in a Regulation A offering generally can be freely transferred by investors after purchase, subject to restrictions on the resale of such securities by affiliates of the issuer.
- Issuers are permitted to offer and sell securities to a broad U.S. investor base, subject to certain limits on the amount of securities non-accredited investors may purchase under Tier 2 of Regulation A when the offered securities will not be listed on a national exchange.
- Issuers may “test the waters” using general solicitation before and after the offering circular is filed with the SEC. Any solicitation materials used prior to the public filing of an offering circular that has been qualified must be included as exhibits to the circular – and, in all cases, materials are subject to the SEC’s solicitation rules regarding fraud.

The proposed amendments aim to further the SEC’s initiative to expand and facilitate capital raising opportunities to meet evolving market needs, while also balancing investor protections. SEC Chairman Jay Clayton stated, “[e]merging companies—from early-stage start-ups seeking seed capital to companies that are on a path to become a public reporting company—use the exempt offering rules to access critical capital needed to create jobs and scale their businesses... [t]hese proposals are intended to create a more rational framework that better allows entrepreneurs to access capital.”

The proposed amendments, among other things:

- Raise the maximum offering amount from \$50 to \$75 million under Tier 2 of Regulation A and raise the maximum offering amount from \$15 to \$22.5 million for secondary sales under Tier 2 of Regulation A.
- Simplify disclosure requirements of Regulation A to establish greater consistency with the requirements for registered offerings.
- Expand and harmonize certain issuer eligibility qualifications and bad actor disqualification provisions in Regulation A with other sections of the federal securities laws.

The blockchain industry continues to navigate compliance with federal securities laws. Recently, the SEC has taken [action](#) against blockchain startups for engaging in initial coin offerings to raise significant amounts of money allegedly without complying with the requirements of the Securities Act. The SEC’s proposed amendments to Regulation A may provide digital asset issuers a more viable alternative for legally raising funds.

[View Original](#)

Related Professionals

- **Jordan M. Horowitz**
Associate