

US SEC takes steps to increase access to capital for small companies

The Securities and Exchange Commission ("SEC") of the United State on 18th December voted to propose rules intended to increase access to capital for smaller companies. The SEC's proposal builds upon Regulation A, which is an existing exemption from registration for small offerings of securities up to \$5 million within a 12-month period. The updated exemption as passed by the SEC would enable companies to offer and sell up to \$50 million of securities within a 12-month period.

The rules are mandated by Title IV of the Jumpstart Our Business Startup (JOBS) Act.

The proposal is intended to help increase access of smaller companies to capital and that in shaping this proposal, the SEC sought to develop an effective, workable path to raising capital that, very importantly, also builds in necessary investor protections. The SEC's proposal will undergo a 60-day public comment period after it is published in the Federal Register.

The proposal also explores alternative approaches to addressing this matter, including the coordinated review program proposed by the North American Securities Administrators Association.

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US Labor Department seeks public comment on agency standards to improve chemical safety

The U.S. Department of Labor's Occupational Safety and Health Administration has announced a request for information seeking public comment on potential revisions to its Process Safety Management standard and related standards, as well as other policy options to prevent major chemical incidents.

The RFI is in response to executive order 13650, which seeks to improve chemical facility safety and security, issued in the wake of the April 2013 West, Texas, tragedy that killed 15 in an ammonium nitrate explosion.

In addition to comments on its Process Safety Management standard, OSHA seeks input on potential updates to its Explosives and Blasting Agents, Flammable Liquids and Spray Finishing standards, as well as potential changes to PSM enforcement policies. The agency also asks for information and data on specific rulemaking and policy options, and the workplace hazards they address. OSHA will use the

27 December 2013

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information received in response to this RFI to determine what actions, if any, it may take.

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US proposes adjustments to excepted benefits regulations

The U.S. Departments of Labor, Health and Human Services, and Treasury on 24th December 2013 proposed rules that would adjust regulations under the Health Insurance Portability and Accountability Act of 1996 regarding excepted benefits to include employee assistance programs (EAPs). The proposed rules would also provide added options for employees and employers in connection with the Affordable Care Act.

It is believed that this proposal would give employers and workers more options for their health-care coverage while being true to the protections under the Affordable Care Act.

Under the HIPAA, excepted benefits are exempt from certain health reform requirements, including some requirements added by the Affordable Care Act. There is a concern that the HIPAA definitions should be updated in light of new Affordable Care Act standards.

The proposed rules would amend current regulations to treat certain EAPs as excepted benefits, effective immediately. EAPs are typically free programs offered by employers that can provide wide-ranging benefits to address circumstances that might otherwise adversely affect employees' work and health. Benefits may include short-term substance abuse or mental health counseling or referral services, as well as financial counseling and legal services. Under the proposed rules, EAPs would be considered excepted benefits if the program is free to employees and does not provide significant benefits in the nature of medical care or treatment. As excepted benefits, EAPs would be exempt from private insurance market reforms, and EAP coverage would not make individuals ineligible for a premium tax credit for enrolling in qualified health plans through the Health Insurance Marketplace.

Effective for plan years starting in 2015, the proposed rules also would treat as excepted benefits certain limited coverage provided by plan sponsors that "wraps around" an individual market policy. The "wraparound" coverage would be available to employees for whom the plan sponsor's primary group health coverage is not affordable and who instead get coverage through a nongrandfathered individual market policy.

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Suit filed by US to restore losses to the Miller's Health Systems Employee Stock Ownership Plan

The U.S. Department of Labor has filed a lawsuit in U.S. District Court to recover losses to the Miller's Health Systems, Inc., Employee Stock Ownership Plan. The suit alleges that PBI Bank, Inc., the trustee of the plan, authorized the purchase of company stock for \$40 million, an amount far in excess of the fair market value of the stock. The suit also alleges that PBI Bank approved financing for the transaction at an excessive interest rate. Miller's Health is a Warsaw-based company that manages long-term care and assisted-living facilities.

An investigation by the Chicago Regional Office of the department's Employee Benefits Security Administration focused on a September 2007 stock purchase. The suit alleges that PBI violated ERISA by imprudently and disloyally approving the purchase of stock by the plan. The suit seeks to require PBI to restore all losses suffered by the ESOP, plus interest.

After conducting its investigation, the department concluded that, as a result of the design of the transaction and the fiduciary breaches of PBI, the stock purchase was not for the primary benefit of participants and did not promote employee ownership in Miller's Health. As a result, the department concluded that PBI was responsible and liable for violations of the Employee Retirement Income Security Act.

The lawsuit also seeks to remove PBI as a fiduciary and service provider of the plan and to permanently bar it from serving as a fiduciary or service provider to ERISA-covered plans in the future.

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