



# SEC Unanimously Approves Regulation A+ Rules

On Wednesday March 25<sup>th</sup>, 2015, the Securities & Exchange Commission (SEC) unanimously adopted amendments to Regulation A. Due to its low dollar threshold and failure to preempt state blue sky laws, Regulation A has heretofore been a little utilized exemption from registration for certain smaller offerings by private companies. The amendments, mandated by Title IV of the JOBS Act, and commonly known as Regulation A+, increase the dollar amount of securities companies can offer and sell from \$5 million to \$50 million in a 12 month period and otherwise modernize the existing framework under Regulation A by, among other things, requiring that disclosure documents be filed on EDGAR, allowing an issuer to make a confidential submission with the SEC, permitting certain test-the-waters communications, and disqualifying bad actors.

## *Offering Limits*

Regulation A+ creates a two-tiered offering exemption. Tier I limits imposes a \$20 million annual offering limit, and restricts the value of securities sold by affiliates of the issuer to \$6 million. Tier II increases the offering size to \$50 million annually, while limiting the amount of securities sold by affiliates of the issuer to \$15 million. Regulation A+ also limits sales by all selling security-holders to 30% of the aggregate offering price in the issuer's initial Regulation A+ offering and subsequent Regulation A+ offerings for the first 12 months following the initial qualifying offering.

## *Investment Restrictions*

Regulation A+ does not place any restriction on the type of investor a Tier I issuer can sell to. Tier II, however, limits the value of securities a non-accredited investor may purchase to ten percent of such person's annual income or net worth, whichever is greater. A Tier II issuer will not be required to verify an investor's net worth or income and may rely on investor's representations, unless the issuer has reason to know such statement is untrue at the time of sale. This foregoing Tier II limitation does not apply to securities listed on a national exchange.

## *Offering Statements*

Prior to the sale of securities, Tier I and II issuers must file and qualify an offering statement with the SEC. The offering statement is intended to be a disclosure document that provides potential investors with information that will form the basis for their investment decision. A notice of "qualification" is similar to a notice of effectiveness in an SEC-registered offering. Issuers are also permitted to confidentially submit offering statements to the SEC for review, provided the offering statement is publicly filed not later than 21 calendar days before qualification. Tier I and Tier II issuers must include balance sheets and similar financial statements in their offerings statements for their previous two fiscal years (or for such shorter time that they have been in existence). A

Tier II issuer's financial statements must be audited and GAAP compliant. The offering statement consists of three parts.

Part I requires basic identifying information about the issuer, a certification of its eligibility to use Regulation A+, the jurisdictions where the securities will be offered, the amount and type of securities offered, and the disclosure of its auditor and legal service provider.

Part II contains the issuer's financial statements mentioned above and a disclosure document. The disclosure document closely resembles a prospectus, and discloses the issuer's business, risk factors, use of proceeds, directors and executive officers, compensation information, and ownership information.

Part III contains the issuer's exhibits, including: underwriting agreement; governing documents; instrument defining the rights of investors; subscription agreement; voting trust agreement; material contracts; plan of acquisition, reorganization, arrangement, liquidation, or succession; escrow agreements; consents; opinion regarding legality; and appointment of agent for service of process.

### ***Ongoing Reporting***

Tier I issuers must provide information about sales in Regulation A+ offering by electronically filing a Form 1-Z exit report with the SEC not later than 30 calendar days after termination or completion of an offering. Form 1-Z will include: the date the offering was qualified and commenced, the number of securities qualified, the number of securities sold in the offering, the price of the securities, any fees associated with the offering, and the net proceeds to the issuer. Aside from Form 1-Z, Tier I issuers have no other ongoing reporting obligations. Regulation A+ requires Tier II issuers to file annual and semiannual reports, as well as current event reports. Tier II issuers will also be required to submit Form 1-Z, if they have not previously provided this information on Form 1-K as part of their annual report.

### ***Eligibility***

Regulation A+'s use will be limited to companies organized in and with their principal place of business in the United States or Canada. The exemption will not be available to companies that: (1) are already SEC reporting companies; (2) have no specific business plan or purpose; (3) are seeking to offer and sell asset-backed securities or fractional undivided interests in oil, gas or other mineral rights; (4) have been subject to any order of the SEC under Exchange Act Section 12(j) entered within the past five years; (5) have not filed ongoing reports required by the rules during the preceding two years; or (6) are disqualified under the "bad actor" rules.

### *State Securities Law Requirements*

While Tier I offering will remain subject to state securities law requirements with newly implemented NASAA coordinated review available. Tier II sales are not be subject to pre-offering state level review but remain subject to state blue sky filings and anti-fraud provisions.