



11693 San Vicente Boulevard  
Suite 357  
Los Angeles, California 90049  
310-207-0665

[www.seclawfirm.com](http://www.seclawfirm.com)

---

**SECURITIES LAW UPDATE**      **January 6, 2014**

---

**SEC PROPOSES FAR-REACHING REFORMS  
FOR SMALLER PUBLIC OFFERINGS**

**Background**

Following the mandate of the Jumpstart Our Business Start-Up (JOBS) Act, on December 18, 2013 the Securities and Exchange Commission proposed rules to amend largely forgotten and little-used Regulation A. Having received far less attention than either of the other two major equity raising initiatives under the JOBS Act, general solicitation of accredited investors and equity crowdfunding, the revisions to Regulation A may well be the most far-reaching of the JOBS Act reforms. Informally known as “Regulation A+”, the new proposal – expected to be adopted by the SEC in the first half of 2014 following a 60-day public comment period – has the potential to become a dramatically less expensive path to going public for many smaller companies whose investors seek an exit strategy or liquidity for their investment.

The SEC’s proposal builds upon existing Regulation A, which is an existing exemption from registration for small offerings of securities up to \$5 million within a 12-month period. The two major drawbacks to Regulation A are the small dollar limit (thereby resulting in high transaction costs as a percentage of the offering) and the fact that Regulation A offerings are not exempt from state blue sky laws, adding additional levels of complexity and cost to completing a Regulation A transaction. For these reasons, Regulation A receded into relative obscurity over the last few decades. Regulation A, in its current form, will continue as so-called Tier 1 of Regulation A, and we expect reliance on Tier 1 to continue to remain in obscurity.

As proposed, “Regulation A+” will enable companies to publicly offer and sell up to \$50 million of securities within a 12-month period under a so-called Tier 2 within Regulation A. In addition, and crucially, Tier II-registered securities will be exempt from state blue sky laws, something that the state securities administrators strongly oppose. Finally, ongoing reporting obligations will be less burdensome than those for traditional reporting companies.

(continues over)

## **Proposal**

As proposed, both Tier 1 and Tier 2 offerings under Regulation A will:

- permit companies to submit draft offering statements for non-public SEC review prior to filing;
- permit the use of “testing the waters” solicitation materials both before and after filing of the offering statement;
- modernize the qualification, communications and offering process in Regulation A to reflect analogous provisions of the Securities Act registration process; and
- require electronic filing of offering materials.

In addition, in Tier 2 offerings:

- investors would be limited to purchasing no more than 10 percent of the greater of the investor’s annual income or net worth.
- the financial statements (two years in most cases) included in the offering circular would be required to be audited; and
- the company would be required to file annual and semi-annual periodic reports and current event updates that are similar to the current requirements for public company reporting under the Exchange Act.

The main eligibility requirements to use Regulation A (both Tier 1 or Tier 2) include that the company:

- must be organized in the United States or Canada;
- cannot have no specific business plan or purpose or have indicated that its business plan is to engage in a merger or acquisition with an unidentified company;
- is not or has not been subject to an SEC order revoking the company’s registration under the Exchange Act during the preceding five years; and
- is not disqualified under the recently adopted “bad actor” disqualification rules.

If you have questions regarding the new SEC proposal, other capital raising initiatives under the JOBS Act, strategic planning to take advantage of the new initiatives or specific fact patterns, please contact:

**Lance Jon Kimmel**  
**SEC Law Firm**  
**11693 San Vicente Boulevard**  
**Suite 357**  
**Los Angeles, California 90049**  
**tel. 310/557-3059**  
[lkimmel@seclawfirm.com](mailto:lkimmel@seclawfirm.com)