

# Small Public Offerings - New Regulation A+ Rules Issued by SEC

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On April 5, 2012, President Obama signed into law the “Jumpstart Our Business Startups Act” (the JOBS Act). Title IV of the JOBS Act required the Securities and Exchange Commission (SEC) to create a new exemption from the federal securities registration requirements for certain smaller public offerings. The new exemption, commonly known as Regulation A+, is supposed to permit companies to sell up to \$50 million of securities within a 12-month period without going through the full-blown SEC registration process.

On December 18, 2013 the SEC finally proposed the rules and forms related to the offer and sale of securities under Regulation A+. The proposed rules have been much-anticipated, because of the possibility of permitting companies to conduct simplified IPOs for up to \$50 million. The existing version of Regulation A limited the amount of such public offerings to \$5 million, and was rarely used.

As proposed, Regulation A+ establishes two tiers of Regulation A offerings: Tier 1 would continue to permit small offerings of up to \$5 million (including sales of up to \$1.5 million by selling shareholders) within a 12-month period. Essentially, this maintains the existing regulation of small offerings. Tier 2 raises the ceiling to \$50 million (with up to \$15 million by selling shareholders), but imposes enhanced investor protection requirements.

Regulation A+ would not be available to companies that already are public companies, to shell companies, or to companies that are subject to “bad actor” disqualifications, among others. If adopted, the proposals would include the following provisions:

- The company would have to file an offering circular with the SEC containing disclosure regarding the company and the offering. The qualification process for the offering circular is similar to that of a registration statement currently filed for an IPO. However, the disclosure in the offering circular would be significantly less extensive than is currently required for an IPO. The offering circular would also have to include the company’s financial statements. The financial statements for Tier 2 offerings would have to be audited.
- The company could obtain indications of interest from any potential investor, both before and after filing the offering statement with the SEC, a practice known as “testing the waters.”
- An investor in a Tier 2 offering would be limited to purchasing securities in an amount not to exceed 10% of his or her annual income or net worth, whichever is greater. Annual income and net worth would be calculated in accordance with the definition of an accredited investor in Rule 501 of Regulation D.
- After a Regulation A+ offering, the company would have to file annual, semi-annual and current event reports with the SEC for so long as the company has at least 300 record shareholders.

Tier 2 offerings of over \$5 million would be preempted from “Blue Sky” review, thereby essentially removing the offering from state regulatory review.

The proposed rules are now subject to a 60-day public comment period, and then must be published in the Federal Register. As a result, the enhanced Regulation A+ exemption most likely will not be available until mid-2014.