

SEC Issues Reg A+ to Help Private Companies Obtain Capital

PROFESSIONALS

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PRACTICE AREAS

Audit

In March 2015, the Securities and Exchange Commission (“SEC”) approved an amendment to Regulation A whereby private companies could provide offerings of securities of up to \$50 million in a twelve-month period and be exempt from registration under the Securities Act of 1933.

The new rules, which are commonly referred to as Regulation A+ or Reg A+, became effective in June 2015. Reg A+ provides two alternatives for companies to raise capital and there are specific requirements for each offering level. Tier 1 includes offerings of up to \$20 million in a twelve-month period, and Tier 2 includes offerings up to \$50 million in a twelve-month period. There are also specific dollar limitations under each Tier with respect to selling securities to affiliates of the issuer.

The requirements for offerings under Reg A+ with respect to eligibility, reporting, and disclosure, are similar to the current requirements under Regulation A. However, Tier 2 offerings are subject to additional requirements, including ongoing reporting requirements to the SEC. Furthermore, non-accredited investors in a Tier 2 offerings are limited to the amount of securities they can purchase based on their income or net worth.

In order to offer securities under Reg A+, companies must file an offering statement on Form 1-A with the SEC, which consists of three parts, including basic information about the company and the offering, financial statements and management discussion and analysis (“MD&A”) for the two most recently completed fiscal years, as well as exhibits and other information about the offering statement. A Tier 1 offering does not require audited financial statements but if the issuer has audited financial statements, they must be included in the Form 1-A. Tier 2 issuers are required to present audited financial statements in their offering statement on Form 1-A.

Tier 1 filers will not require subsequent ongoing reporting to the SEC. Tier 2 companies must file annual reports with the SEC, which include two years of audited financial statements, MD&A, as well as disclosures related to the Company's business and operations for the three preceding years. Additionally, Tier 2 companies must file semi-annual reports, including financial statements, to the SEC; however, the semi-annual financial statements are not required to be audited or reviewed by an independent accounting firm. Tier 2 companies are also required to report to the SEC within four days if there are fundamental changes to the business, such as the termination of certain executives, a change in control or a change in auditors. Unlike SEC reporting companies, Tier 2 companies are not subject to internal controls attestation reporting requirements under the Sarbanes-Oxley Act. Additionally, comfort letters are not required under Reg A+ filings, however in some cases, accountants may be asked to provide comfort letters to third parties.

Companies offering securities under Reg A+ may not use accounting alternatives available to private companies under accounting principles generally accepted in the United States of America. Additionally, Reg A+ companies can elect to adopt new subsequent accounting standards in the same time frame as private companies but the election must be made at the time of filing the offering circular and must be applied to all new and amended accounting standards.

Reg A+ is an excellent way for companies to raise capital to help expand business operations without having to take on additional debt, particularly for start-up companies. We will likely be seeing more companies taking advantage of these capital-raising opportunities in the near future.

To learn more about Reg A +, contact Michael Cole at 562.216.1806 or michael.cole@hcv.com.