

What's Market? Update: Securities

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Timothy B. Bancroft, John C. Cushing, David L. Coombs, Yaacov M. Gross and Kenneth A. Sicklick



what's market?

Regulation A+

Amendments to Regulation A adopted by the SEC to comply with a mandate in the JOBS Act took effect on June 19, 2015. Regulation A as amended (often referred to as "Regulation A+") expands the maximum aggregate amount that may be raised in a Regulation A offering over a 12-month period from \$5 million to \$50 million, and requires different levels of pre-closing and post-closing compliance depending on whether the amount raised is up to \$20 million (referred to as "Tier 1 offerings") or up to \$50 million (referred to as "Tier 2 offerings"). Both tiers are subject to additional limitations.

As many commenters have noted, it remains to be seen whether the amendments will change the fact that Regulation A has rarely been used, or issuers will instead decide that Regulation A+ does not provide sufficient advantages compared to either (i) conducting a private placement where a general solicitation is used and sales are made to only accredited investors or (ii) going through a full-blown IPO process. Among other burdens, Tier 1 offerings do not preempt Blue Sky requirements and some States are already questioning whether the SEC had the power to preempt Blue Sky for Tier 2 offerings as it has purported to do; companies that conduct Tier 2 offerings will have ongoing reporting requirements; and the offering statement requirements are still quite extensive, including financial statements for both Tier 1 and Tier 2 offerings, and audited financial statements for Tier 2 offerings.

Pay Ratio Disclosure

On August 5, 2015, the SEC adopted a final rule that will require public companies to disclose the ratio of the compensation of its CEO to the median compensation of all of its other employees. The rule, which was mandated by Dodd-Frank, does not require compliance until fiscal years beginning January 1, 2017 or later. The disclosure will need to be in annual proxy statements and included or incorporated by reference in registration statements for public offerings. It is theoretically designed to help shareholders to decide to whether to indicate their (non-binding) approval or disapproval of a company's executive compensation.

Updated Division of Corporation Finance C&DIs

On August 6, 2015, the SEC's Division of Corporation Finance updated its Compliance and Disclosure Interpretations (or "C&DIs") regarding various rules under the Securities Act of 1933. Many of the C&DIs had been released earlier, but there are quite a few new ones that give some useful gloss to the new rules permitting general solicitation under Regulation D where securities are sold to accredited investors only.

This advisory should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own lawyer concerning your situation and any specific legal questions you may have.

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