
Amendments to Regulation A: A Small Entity Compliance Guide*

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1. Summary of Regulation A

On March 25, 2015, the Securities and Exchange Commission (the “Commission”) adopted final rules to implement Section 401 of the Jumpstart Our Business Startups (JOBS) Act by expanding Regulation A into two tiers: Tier 1, for securities offerings of up to \$20 million in a 12-month period; and Tier 2, for securities offerings of up to \$50 million in a 12-month period. An issuer of \$20 million or less of securities can elect to proceed under either Tier 1 or Tier 2. The 2015 amendments to Regulation A built on the prior Regulation A and preserved, with some modifications, the prior provisions regarding issuer eligibility, offering circular contents, testing the waters, and “bad actor” disqualification. The 2015 amendments modernized the Regulation A filing process for all offerings, aligned practice in certain areas with prevailing practice for registered offerings, created additional flexibility for issuers in the offering process, and established an ongoing reporting regime for certain Regulation A issuers. On December 19, 2018, the Commission further amended the issuer eligibility and related provisions pursuant to the Economic Growth, Regulatory Relief, and Consumer Protection Act to allow companies that are subject to the ongoing reporting requirements of Section 13 or 15(d) of the Exchange Act to use Regulation A.

Under the final rules, Tier 2 issuers are required to include audited financial statements in their offering documents and to file annual, semiannual, and current reports with the Commission on an ongoing basis. With the exception of securities that will be listed on a national securities exchange upon qualification, purchasers in Tier 2 offerings must either be accredited investors, as that term is defined in Rule 501(a) of Regulation D, or be subject to certain limitations on their investment. The requirements for Tier 1 and Tier 2 offerings are described more fully below.

2. Scope of Exemption

Understanding the scope of the exemption is important because not all issuers are eligible to conduct offerings pursuant to Regulation A. Additionally, there are limitations on the types of securities that may be sold and on the amount of securities that may be sold by the issuer and selling securityholders, as well as other issues that may affect the issuer's offering process pursuant to the exemption.

a. Eligible Issuers and Securities

Regulation A is available only to companies organized in and with their principal place of business in the United States or Canada. Regulation A is not available to:

- companies registered or required to be registered under the Investment Company Act of 1940 and BDCs;
- development stage companies that have no specific business plan or purpose or have indicated that their business plan is to engage in a merger or acquisition with an unidentified company or companies (often referred to as, "blank check companies");
- issuers of fractional undivided interests in oil or gas rights, or similar interests in other mineral rights;
- issuers that are required to, but that have not, filed with the Commission the ongoing reports required by the rules under Regulation A during the two years immediately preceding the filing of a new offering statement (or for such shorter period that the issuer was required to file such reports);
- issuers that are or have been subject to an order by the Commission denying, suspending, or revoking the registration of a class of securities pursuant to Section 12(j) of the Exchange Act that was entered within five years before the filing of the offering statement; and
- issuers subject to "bad actor" disqualification under Rule 262.

The final rules limit the types of securities eligible for sale under Regulation A to the specifically enumerated list in Section 3(b)(3) of the Securities Act, which includes warrants and convertible equity and debt securities, among other equity and debt securities. The final rules exclude asset-backed securities from the list of eligible securities.

b. Offering Limitations and Secondary Sales

Issuers may elect to conduct a Regulation A offering pursuant to the requirements of either Tier 1 or Tier 2. Tier 1 is available for offerings of up to \$20 million in a 12-month period, including no more than \$6 million on behalf of selling securityholders that are affiliates of the issuer. Tier 2 is available for offerings of up to \$50 million in a 12-month period, including no more than \$15 million on behalf of selling securityholders that are affiliates of the issuer. Additionally, sales by all selling securityholders in a Regulation A offering are limited to no more than 30% of the aggregate offering price in an issuer's first Regulation A offering and any subsequent Regulation A offerings in the following 12-month period.

c. Investment Limitations in Tier 2 Offerings

Issuers that conduct a Tier 2 offering should note that Regulation A limits the amount of securities that an investor who is not an [accredited investor](#) under Rule 501(a) of Regulation D can purchase in a Tier 2 offering to no more than: (a) 10% of the greater of annual income or net worth (for natural persons); or (b) 10% of the greater of annual revenue or net assets at fiscal year-end (for non-natural persons). This limit does not, however, apply to purchases of securities that will be listed on a national securities exchange upon qualification.

d. Integration

The integration doctrine provides an analytical framework for determining whether multiple securities transactions should be considered part of the same offering. This analysis helps to determine whether registration under Section 5 of the Securities Act is required or an exemption is available for the entire offering. Generally, the determination as to whether particular securities offerings should be integrated calls for an analysis of the specific

facts and circumstances. Regulation A, however, provides issuers with a safe harbor that offerings conducted pursuant to Regulation A will not be integrated with:

- prior offers or sales of securities; or
- subsequent offers or sales of securities that are:
 - registered under the Securities Act, except as provided in Rule 255(c);
 - made pursuant to Rule 701 under the Securities Act;
 - made pursuant to an employee benefit plan;
 - made pursuant to Regulation S;
 - made pursuant to Section 4(a)(6) of the Securities Act; or
 - made more than six months after completion of the Regulation A offering.

e. Treatment under Section 12(g)

Section 12(g) of the Securities Exchange Act of 1934 requires, among other things, that an issuer with total assets exceeding \$10,000,000 and a class of equity securities held of record by either 2,000 persons, or 500 persons who are not accredited investors, register such class of securities with the Commission. Regulation A, however, conditionally exempts securities issued in a Tier 2 offering from the mandatory registration provisions of Section 12(g) for so long as the issuer remains subject to, and is current in (as of its fiscal year end), its Regulation A periodic reporting obligations. Additionally, in order for the conditional exemption to apply, issuers in Tier 2 offerings are required to engage the services of a transfer agent registered with the Commission pursuant to Section 17A of the Exchange Act. The final rules also provide that the conditional exemption from Section 12(g) is only available to companies that meet certain size-based requirements.^[1] An issuer that exceeds the size-based requirements is granted a two-year transition period before it would be required to register its class of securities pursuant to Section 12(g), provided it timely files all ongoing reports due during such period.

3. Offering Statement

All issuers that conduct offerings pursuant to Regulation A are required to electronically file an offering statement on Form 1-A on the Commission's Electronic Data Gathering, Analysis and Retrieval system (EDGAR). [Form 1-A](#) consists of three parts:

- [Part I](#): an eXtensible Markup Language (XML) based fillable form;
- [Part II](#): a text file attachment containing the body of the disclosure document and financial statements; and
- [Part III](#): text file attachments, containing the signatures, exhibits index, and the exhibits to the offering statement.

a. Part I

Part I of Form 1-A serves as a notice of certain basic information about the issuer and its proposed offering, which also helps to confirm the availability of the exemption. The notification in Part I of Form 1-A requires disclosure in response to the following items:

- Item 1. (Issuer Information) requires information about the issuer's identity, industry, number of employees, financial statements and capital structure, as well as contact information.
- Item 2. (Issuer Eligibility) requires the issuer to certify that it meets various issuer eligibility criteria.
- Item 3. (Application of Rule 262 ("bad actor" disqualification and disclosure)) requires the issuer to certify that no disqualifying events have occurred and to indicate whether related disclosure will be included in the offering circular.

- Item 4. (Summary Information Regarding the Offering and other Current or Proposed Offerings) includes indicator boxes or buttons and text boxes eliciting information about the offering.
- Item 5. (Jurisdictions in Which Securities are to be Offered) requires information about the jurisdiction(s) in which the securities will be offered.
- Item 6. (Unregistered Securities Issued or Sold Within One Year) requires disclosure about unregistered issuances or sales of securities within the last year.

b. Part II

Part II of Form 1-A contains the primary disclosure document that an issuer will prepare in connection with a Regulation A offering, called an “offering circular.” Issuers are required to provide financial disclosure in Part II that follows the requirements of Part F/S of Form 1-A, while they have the option to prepare narrative disclosure that follows one of two different formats.^[2]

i. Offering Circular Format

The Offering Circular format is a simplified and scaled version of the narrative disclosure requirements otherwise required to be provided by issuers in registered offerings on Form S-1. In addition to the availability of certain scaled disclosure items, the Offering Circular format is meant to simplify the process by which an issuer prepares its narrative disclosure by limiting the need for issuers to look outside the form for disclosure guidance.

ii. Part I of Form S-1 or Part I of Form S-11 Formats

Part I of Form S-1 and Part I of Form S-11 contain the narrative disclosure requirements for registration statements filed by issuers in registered offerings. In addition to the Offering Circular format, issuers may provide narrative disclosure in Part II of Form 1-A that follows the requirements of Part I of Form S-1 or, in certain circumstances, Part I of Form S-11. While Form S-1 is generally available for all types of issuers and transactions, Form S-11 is only available for offerings of securities issued by (i) real estate investment trusts, or (ii) issuers whose business is primarily that of acquiring and holding for investment real estate or interests in real estate or interests in other issuers whose business is primarily that of acquiring and holding real estate or interest in real estate for investment. Part I of both Form S-1 and Form S-11 generally describes narrative disclosure requirements by cross-reference to the item requirements of Regulation S-K.

iii. Part F/S (Financial Statements)

Part II of Form 1-A requires issuers to provide financial statements that comply with the requirements of Part F/S. Part F/S requires issuers in both Tier 1 and Tier 2 offerings to file balance sheets and related financial statements for the two previous fiscal year ends (or for such shorter time that they have been in existence). For Tier 1 offerings, issuers are not required to provide audited financial statements unless the issuer has already prepared them for other purposes. Issuers in Tier 2 offerings are required to include financial statements in their offering circulars that are audited in accordance with either the auditing standards of the American Institute of Certified Public Accountants (AICPA) (referred to as U.S. Generally Accepted Auditing Standards or GAAS) or the standards of the Public Company Accounting Oversight Board (PCAOB). Part F/S requires issuers in both Tier 1 and Tier 2 offerings to include financial statements in Form 1-A that are dated not more than nine months before the date of non-public submission, filing, or qualification, with the most recent annual or interim balance sheet not older than nine months. If interim financial statements are required, they must cover a period of at least six months.

c. Part III

Part III of Form 1-A requires issuers to file certain documents as exhibits to the offering statement. Issuers are required to file the following exhibits with the offering statement: underwriting agreement; charter and by-laws; instrument defining the rights of securityholders; subscription agreement; voting trust agreement; material contracts; plan of acquisition, reorganization, arrangement, liquidation, or succession; escrow agreements;

consents; opinion regarding legality; “testing the waters” materials; appointment of agent for service of process; materials related to non-public submissions; and any additional exhibits the issuer may wish to file.

d. Non-Public Submission of Draft Offering Statements

Issuers whose securities have not been previously sold pursuant to a qualified offering statement under Regulation A or an effective registration statement under the Securities Act are allowed to submit to the Commission a draft offering statement for non-public review by the staff. Consistent with the treatment of draft registration statements in registered offerings, a non-publicly submitted offering statement must be substantially complete upon submission in order for staff of the Division of Corporation Finance to begin its review. All non-public submissions of draft offering statements must be submitted electronically via EDGAR, and the initial non-public submission, all non-public amendments thereto, and correspondence submitted by or on behalf of the issuer to the Commission staff regarding such submissions must be publicly filed and available on EDGAR not less than 21 calendar days before qualification of the offering statement.

e. Qualification

Issuers are only permitted to begin selling securities pursuant to Regulation A once the offering statement has been qualified by the Commission. The Division of Corporation Finance has delegated authority to declare offering statements qualified by a “notice of qualification,” which is analogous to a notice of effectiveness in registered offerings.

4. Solicitation of Interest Materials

Issuers are permitted to “test the waters” with, or solicit interest in a potential offering from, the general public either before or after the filing of the offering statement, provided that all solicitation materials include the legends required by the final rules and, after publicly filing the offering statement, are preceded or accompanied by a preliminary offering circular or contain a notice informing potential investors where and how the most current preliminary offering circular can be obtained.

5. Ongoing Reporting

Issuers in Tier 1 offerings are required to provide information about sales in such offerings and to update certain issuer information by electronically filing a Form 1-Z exit report with the Commission on EDGAR not later than 30 calendar days after termination or completion of an offering. Issuers in Tier 2 offerings are required to electronically file annual and semiannual reports, as well as current reports and, in certain circumstances, an exit report on Form 1-Z, with the Commission on EDGAR.

a. Annual Report on Form 1-K (Tier 2 Issuers Only)

Issuers in Tier 2 offerings are required to electronically file annual reports with the Commission on EDGAR on Form 1-K within 120 calendar days of the issuer’s fiscal year end. Form 1-K requires issuers to update certain information previously filed with the Commission pursuant to Part I of Form 1-A, as well as to provide disclosure relating to the issuer’s business operations for the preceding three fiscal years (or, if in existence for less than three years, since inception), related party transactions, beneficial ownership of the issuer’s securities, executive officers and directors, including certain executive compensation information, management’s discussion and analysis (MD&A) of the issuer’s liquidity, capital resources, and results of operations, and two years of audited financial statements.

b. Semiannual Report on Form 1-SA (Tier 2 Issuers Only)

Issuers in Tier 2 offerings are required to electronically file semiannual reports with the Commission on EDGAR on Form 1-SA within 90 calendar days after the end of the first six months of the issuer’s fiscal year. Form 1-SA requires issuers to provide disclosure primarily relating to the issuer’s interim financial statements and MD&A.

c. Current Report on Form 1-U (Tier 2 Issuers Only)

Issuers in Tier 2 offerings are required to electronically file current reports with the Commission on EDGAR on Form 1-U within four business days of the occurrence of one (or more) of the following events:

- Fundamental changes;
- Bankruptcy or receivership;
- Material modification to the rights of securityholders;
- Changes in the issuer's certifying accountant;
- Non-reliance on previous financial statements or a related audit report or completed interim review;
- Changes in control of the issuer;
- Departure of the principal executive officer, principal financial officer, or principal accounting officer; and
- Unregistered sales of 10% or more of outstanding equity securities.

d. Exit Report on Form 1-Z (Tier 1 and Tier 2 Issuers)

Issuers in Tier 1 offerings are required to electronically file with the Commission on EDGAR certain summary information on terminated or completed Regulation A offerings in an exit report on Part I of Form 1-Z not later than 30 calendar days after termination or completion of an offering. Issuers conducting Tier 2 offerings are required to provide this information in Part I of Form 1-Z, if such information was not previously provided on Form 1-K as part of their annual report, at the time of filing information in response to Part II of Form 1-Z.

Issuers in Tier 2 offerings that have filed all ongoing reports required by Regulation A for the shorter of (1) the period since the issuer became subject to such reporting obligation or (2) its most recent three fiscal years and the portion of the current year preceding the date of filing Form 1-Z may immediately suspend their ongoing reporting obligations under Regulation A at any time after completing reporting for the fiscal year in which the offering statement was qualified, if the securities of each class to which the offering statement relates are held of record by fewer than 300 persons and offers or sales made in reliance on a qualified Tier 2 offering statement are not ongoing. In such circumstances, an issuer's obligation to continue to file ongoing reports in a Tier 2 offering under Regulation A would be suspended immediately upon the electronic filing of a notice with the Commission on Part II of Form 1-Z.

e. Exchange Act Reporting Companies

Under the amendments adopted in December 2018, a Tier 2 issuer that is an Exchange Act reporting company is deemed to have met its periodic and current reporting requirements under Regulation A if the issuer meets the reporting requirements of Section 13 or 15(d) of the Exchange Act. An Exchange Act reporting company that is relying on its Exchange Act reports to meet its Regulation A reporting obligations that subsequently terminates or suspends its duty to file reports under the Exchange Act may be eligible to automatically terminate its Regulation A reporting obligation if the issuer is eligible to file a Form 1-Z with respect to the class of securities at that time. If the issuer is not eligible to file a Form 1-Z at that time, it will be required to commence Regulation A reporting for the periods specified in the rule.

6. Bad Actor Disqualification

The "bad actor" disqualification provisions contained in Rule 262 of Regulation A disqualify securities offerings from reliance on Regulation A if the issuer or other relevant persons (such as underwriters, placement agents, and the directors, officers and significant shareholders of the issuer) (collectively, "covered persons") have experienced a disqualifying event, such as being convicted of, or subject to court or administrative sanctions for, securities fraud or other violations of specified laws.

a. Covered Persons

Understanding the categories of persons that are covered by Rule 262 is important because issuers are required to conduct a factual inquiry to determine whether any covered person has had a disqualifying event, and the existence of such an event will generally disqualify the offering from reliance on Regulation A.

"Covered persons" include:

- the issuer, including its predecessors and affiliated issuers
- directors, general partners, and managing members of the issuer
- executive officers of the issuer, and other officers of the issuers that participate in the offering
- 20 percent beneficial owners of the issuer, calculated on the basis of voting power
- promoters connected with the issuer in any capacity
- persons compensated for soliciting investors, including their directors, executive officers or other officers participating in the offerings, general partners and managing members

b. Disqualifying Events

Under the final rule, disqualifying events include:

- Certain criminal convictions
- Certain court injunctions and restraining orders
- Certain final orders of certain state and federal regulators
- Certain SEC disciplinary orders
- Certain SEC cease-and-desist orders
- Suspension or expulsion from membership in a self-regulatory organization (SRO), such as FINRA, or from association with an SRO member
- SEC stop orders and orders suspending the Regulation A exemption
- U.S. Postal Service false representation orders

Many disqualifying events include a look-back period (for example, a court injunction that was issued within the last five years or a regulatory order that was issued within the last ten years). The look-back period is measured from the date of the disqualifying event—for example, the issuance of the injunction or regulatory order and not the date of the underlying conduct that led to the disqualifying event—to the date of the filing of an offering statement.

c. Reasonable Care Exception

The final rule provides an exception from disqualification when the issuer is able to demonstrate that it did not know and, in the exercise of reasonable care, could not have known that a covered person with a disqualifying event participated in the offering.

The steps an issuer should take to exercise reasonable care will vary according to particular facts and circumstances. A note to the rule states that an issuer will not be able to establish that it has exercised reasonable care unless it has made, in light of the circumstances, factual inquiry into whether any disqualification exists.

d. Other Exceptions

i. Determination of issuing authority

Disqualification will not arise if, before the filing of the offering statement, the court or regulatory authority that entered the relevant order, judgment or decree advises in writing—whether in the relevant judgment, order or

decree or separately to the Commission or its staff—that disqualification under Regulation A should not arise as a consequence of such order, judgment or decree.

ii. Disclosure of pre-existing events

Disqualification will not arise as a result of disqualifying events relating to final orders of certain state and federal regulators or certain SEC cease-and-desist orders that occurred before June 19, 2015, the effective date of the rule amendments. Matters that existed before the effective date of the rule and would otherwise be disqualifying are, however, required to be disclosed in writing to investors in Part II of Form 1-A.

e. Waivers

i. Waiver for good cause shown

The final rule provides for the ability to seek waivers from disqualification by the Commission upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied. Staff has identified a number of circumstances that could, depending upon the specific facts, be relevant to the evaluation of a waiver request for good cause shown: <http://www.sec.gov/divisions/corpfin/guidance/disqualification-waivers.shtml>. Issuers may view past applications and waivers granted under Regulation A by referring to the following page: <http://www.sec.gov/divisions/corpfin/cf-noaction.shtml#3b>. Staff in the Division of Corporation Finance's Office of Enforcement Liaison is also available to discuss potential waiver concerns over the phone at (202) 551-3420.

7. Relationship with State Securities Laws

a. Tier 1 Offerings

In addition to qualifying a Regulation A offering with the Commission, issuers in Tier 1 offerings must register or qualify their offering in any state in which they seek to offer or sell securities pursuant to Regulation A. Issuers wishing to obtain information on state-specific registration requirements should contact state securities regulators in the states in which they intend to offer or sell securities for further guidance on compliance with state law requirements. Issuers may also obtain useful information on state securities law registration and qualification requirements, including the option to have Tier 1 offerings that will be conducted in multiple states reviewed pursuant to a coordinated state review program, by visiting the website of the North American Securities Administrators Association (NASAA) at www.nasaa.org.

b. Tier 2 Offerings

While issuers in Tier 2 offerings are required to qualify offerings with the Commission before sales can be made pursuant to Regulation A, they are not required to register or qualify their offerings with state securities regulators. Tier 2 offerings by such issuers, however, remain subject to state law enforcement and antifraud authority. Additionally, issuers in Tier 2 offerings may be subject to filing fees in the states in which they intend to offer or sell securities and be required to file with such states any materials that the issuer has filed with the Commission as part of the offering. The failure to file, or pay filing fees regarding, any such materials may cause state securities regulators to suspend the offer or sale of securities within their jurisdiction. Issuers should contact state securities regulators in the states in which they intend to offer or sell securities for further guidance on compliance with state law requirements.

8. Other Resources

The adopting release for the 2015 amendments to Regulation A can be found on the SEC's website at <http://www.sec.gov/rules/final/2015/33-9741.pdf>. The adopting release for the 2018 amendments permitting Exchange Act reporting companies to use Regulation A is available at <https://www.sec.gov/rules/final/2018/33-10591.pdf>.

Regulation A can be accessed through the "Corporation Finance" section of the SEC's website at <http://www.sec.gov/divisions/corpfin/ecfrlinks.shtml>.

Additional materials regarding the application of Regulation A are available at <http://www.sec.gov/divisions/corpfin/cfguidance.shtml>.

You can also submit complaints or tips about possible securities laws violations on the SEC's questions and complaints page at <http://www.sec.gov/complaint.shtml>.

9. Contacting the SEC

The SEC's Division of Corporation Finance is happy to assist small companies with questions regarding Regulation A. You may contact the Division's Office of Small Business Policy by telephone at (202) 551-3460.

*This guide was prepared by the staff of the U.S. Securities and Exchange Commission as a "small entity compliance guide" under Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, as amended. The guide summarizes and explains rules adopted by the SEC, but is not a substitute for any rule itself. Only the rule itself can provide complete and definitive information regarding its requirements.

[1] See 17 CFR 240.12g5-1(a)(7). The conditional exemption is only available to an issuer that has a public float of less than \$75 million, determined as of the last business day of its most recently completed second fiscal quarter, or, in the absence of a public float, annual revenues of less than \$50 million, as of the most recently completed fiscal year.

[2] The final rules eliminate the Model A (Question-and-Answer) disclosure format under Part II of Form 1-A that was permitted for use in Regulation A offerings before June 19, 2015.

Modified: Feb. 4, 2019