

The Implications to Companies and Auditors from Reg A+

By Nicole Karp

Earlier this year, the Securities and Exchange Commission (SEC) released final rules to facilitate access to capital by smaller companies. The rules actually expanded an existing set of SEC guidelines known as Regulation A. Regulation A allows companies to raise capital without first registering securities with the SEC if certain parameters are met. For this reason, many colloquially refer to the new rules as Regulation A+, or "Reg A+" offerings.

Under a Reg A+ offering, companies can raise up to \$20 million (Tier 1 offering) or up to \$50 million (Tier 2 offering) in a twelve-month period. Not surprisingly, Tier 2 offerings come with more requirements and restrictions. A summary of each type of offering follows below, along with some considerations for potential offerors and their auditors.

Offering Statement

Under a Reg A+ offering, issuers under both tiers must file with the SEC an offering statement on Form 1-A that includes financial statements.

Tier 1.

The financial statements are not required to be audited under a Reg A+ Tier 1 offering unless they have already been audited for another purpose and are available. However, if/when audited financial statements are filed, these financial statements must comply in all respects with U.S. GAAP for public business entities ("PBE GAAP"). Thus, the financial statements must include disclosures required for public business entities (e.g., segments, additional information on share-based payments, etc.), and companies that previously applied private company alternatives permitted under U.S. GAAP must recast their financial statements to eliminate those elections.

The audits can be performed by auditors who are not registered with the PCAOB, unless the issuer simultaneously lists its securities on a national securities exchange. Moreover, the audits may be performed in accordance with U.S. GAAS (issued by the Auditing Standards Board of the AICPA) or PCAOB standards. During the periods covered by the audited financial statements, the auditor must be independent, either under the SEC or AICPA independence guidelines.

Tier 1 offering documents also require the preparation of an MD&A and other information typically seen in public company 10-Q and 10-K filings. Under U.S. GAAS, the auditor has an obligation to review that MD&A (as well as all other sections of the document containing the audited financial statements) to ensure that any disclosures outside the financials are not misleading and are consistent with the audited financial statements.

Additional Information for Tier 2 Offerings.

Two years of audited financial statements are required to be filed with the SEC as part of a Reg A+ Tier 2 offering. Like Tier 1 offerings, the financials must be prepared using PBE GAAP.

The auditor must be independent under SEC regulations, but does not need to be registered with the PCAOB (unless the issuer simultaneously lists its securities on a national securities exchange). The audits may be performed in accordance with U.S. GAAS or PCAOB standards.

Ongoing Reporting Requirements

Tier 1.

Under a Reg A+ Tier 1 offering, registrants must file an exit report on Form 1-Z within 30 days after the termination or completion of the offering. Once filed, a Tier 1 company has no ongoing reporting obligations to the SEC, provided the company doesn't meet the conditions requiring it to comply with the ongoing reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") – i.e., having total assets exceeding \$10 million and a class of equity securities held by either 2,000 or more persons or 500 persons who are not accredited investors.

Presuming the company doesn't meet these conditions, it can elect to revert back to private company GAAP in its post-offering financial statements. However, if a company anticipates undertaking another Tier 1 Reg A+ offering, it may be judicious to continue reporting under PBE GAAP.

Tier 2.

Under a Reg A+ Tier 2 offering, registrants are required to file annual reports on Form 1-K within 120 days after year end, semi-annual reports on Form 1-SA, and current reports on Form 1-U, similar to how public companies file 10-K, 10-Q, and 8-K reports today.

Form 1-K must include audited financial statements for the two most recently completed fiscal years and contain other disclosures similar to those required in the offering statement. Form 1-SA must include financial statements that comply with Article 8 of Regulation S-X; they are not required to be audited by an independent accounting firm.

Because Reg A+ offerings are a relatively new means to raise capital, stay tuned for the latest interpretations of the SEC regulations. Also, it is essential to consult with a qualified securities attorney prior to any Reg A+ offering. For additional information about Reg A+ offerings, we recommend reviewing a [white paper](#) published by Morgan Lewis.

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.