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U.S. SEC ADOPTS FINAL RULES IMPLEMENTING "REGULATION A+" OFFERING EXEMPTION FOR OFFERINGS OF UP TO $50 MILLION

To Our Clients and Friends:

On March 25, 2015, in a unanimous vote, the U.S. Securities and Exchange Commission (the "SEC" or the "Commission") approved final rules to create a new avenue for certain issuers to raise capital in transactions exempt from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"). The set of new rules, collectively referred to as "Regulation A+," amends the existing Regulation A offering exemption and is intended to create additional opportunities for companies to raise capital without having to comply with several of the more burdensome aspects of the traditional registration process. The new rules are expected to be effective on or about June 19, 2015. The adopting release and the Regulation A+ rules are available here: Final Rules.

In addition to creating a two-tiered regime for offerings that may qualify for the registration exemption (Tier 1, for offerings of up to $20 million, and Tier 2, for offerings of up to $50 million), Regulation A+ adds or modifies provisions regarding issuer eligibility, offering circular contents, testing-the-waters, and "bad actor" disqualification. Furthermore, the new rules modernize the Regulation A filing process to permit electronic filings, align certain Regulation A requirements with current practices for registered offerings and establish an ongoing reporting regime for certain Regulation A issuers.

I. Background

The Regulation A+ rules respond to the Congressional mandate in Section 401 of the Jumpstart Our Business Startups Act (the "JOBS Act"). Section 401 added Section 3(b)(2) to the Securities Act and directed the Commission to adopt rules exempting from the registration requirements of the Securities Act offerings by an issuer of up to $50 million of securities annually. Securities issued under Regulation A+ to non-affiliates will be freely tradable and will not be restricted securities under Rule 144 of the Securities Act. With the exception of the holding period requirement, however, affiliates would be subject to the limitations of Rule 144.

Regulation A+ builds upon the existing Regulation A framework, a longstanding but seldom-used offering exemption under the Securities Act, which could be used by an issuer for small public offerings of securities not exceeding $5 million in any 12-month period.[1] Among other factors, required qualification under the state "blue sky" laws, as well as the small dollar limits, were cited as the principal reasons for the underutilization of existing Regulation A.

Regulation A+, the rules and forms of which were first proposed on December 18, 2013, fulfills the SEC's mandate pursuant to Section 401 of the JOBS Act and attempts to create a new avenue of capital raising that addresses the various aspects of Regulation A that resulted in its underutilization by issuers.

II. Exemption Requirements under Regulation A+

Regulation A+ creates two new tiers of exempt offering sizes. Tier 1 offerings are those in which the aggregate offering size does not exceed $20 million during a 12-month period.[2] Tier 2 offerings are those in which the aggregate offering size does not exceed $50 million during a 12-month period.[3]

A. Eligible Issuers

Regulation A+ is available generally to entities organized and with their principal place of business in the United States or Canada. The final rules, however, establish certain categories of issuers which are specifically excluded from making offerings under Regulation A+, such as:

- Issuers subject to Section 13 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") immediately prior to the Regulation A+ offering;
- Blank check companies (for example, a special purpose acquisition company, or SPAC);
- Investment companies registered or required to be registered under the Investment Company Act of 1940 (the "Investment Company Act") or business development companies as defined in Section 2(a)(48) of the Investment Company Act;
- Issuers of fractional undivided interests in oil and gas rights or similar interests in other mineral rights;
- Issuers subject to any order denying, suspending or revoking the registration of a class of securities pursuant to Section 12(j) of the Exchange Act within five years before the filing of a relevant offering statement;
- Issuers who have failed to file with the SEC all reports required to be filed, if any, pursuant to Regulation A+ during the two years before the filing of the offering statement (or for such shorter period that the issuer was required to file reports pursuant to Regulation A+); and
- Issuers subject to "Bad Actor" disqualification under Rule 262 of Regulation A+ (the covered persons and triggering events for bad actor disqualification under Regulation A+ are substantially the same as those under Regulation D).

B. Offering Limits

Although selling stockholders are allowed to participate in offerings under Regulation A+, securities sold by them count toward the annual limits. Because a primary goal of Regulation A+ is to provide another avenue for companies to raise capital, the portion of the aggregate offering price attributable to the securities of selling stockholders may not exceed 30% of the aggregate offering price of a particular offering in (i) the issuer's first offering under Regulation A+ and (ii) any subsequent Regulation A+ offering that is qualified within one year after the qualification date of the issuer's first Regulation A+ offering. In addition, sales by selling stockholders that are affiliates of the issuer may not exceed $6 million (of the $20 million overall limit) in a 12-month period in Tier 1 offerings, or $15 million (of the $50 million overall limit) in a 12-month period in Tier 2 offerings.[4] Thus, a company that conducts Regulation A+ offerings every year has an effective cap on selling stockholder participation.

C. Integration with Other Offerings

The final rules include a limited integration safe harbor. Offerings or sales made in reliance on Regulation A+ will *not* be integrated with prior offers or sales of securities, or with subsequent offers or sales of securities that are: (i) registered under the Securities Act, except as provided in Rule 255(e) (abandoned offerings); (ii) made pursuant to compensatory benefit plans and compensation agreements exempt from registration under Rule 701; (iii) made pursuant to an employee benefit plan; (iv) made outside the United States and exempt from registration under Regulation S; (v) made more than six months after the completion of a Regulation A offering; or (vi) "crowd-funding" offerings exempt from registration under Section 4(a)(6) of the Securities Act.

In the absence of a safe harbor exemption, the integration of Regulation A+ offerings and other offers and sales of securities will depend on the "particular facts and circumstances."

With respect to concurrent exempt offerings, offerings or sales of securities made in reliance on Regulation A+ will *not* be integrated with another exempt offering (for example an offering made in reliance on Regulation D or Rule 144A), provided that each such offering complies with the relevant rules and regulations permitting exemption for that specific offering.

D. Eligible Securities; Treatment of Convertible Securities

Equity securities, debt securities, and securities convertible or exchangeable to equity securities (including any guarantees of such securities) are eligible for exemption under Regulation A+.[5] If convertible securities or warrants are being offered that are convertible, exercisable or exchangeable within one year of the offering statement's qualification (or at the issuer's discretion), the underlying securities must also be qualified and the aggregate offering price for the offering must account for the actual or maximum estimated conversion, exercise or exchange price, effectively reducing the quantity of securities that can be offered by that amount.[6]

E. Continuous or Delayed Offerings

Issuers may make continuous or delayed offerings under Regulation A+ under certain conditions. Continuous or delayed offerings are generally available for offerings that: (i) commence within two days after the qualification date, (ii) will be made on a continuous basis, (iii) may continue for a period in excess of 30 calendar days from the qualification date and (iv) at the time of qualification, are reasonably expected to be completed within two years of the qualification date.[7]

Issuers may make continuous or delayed offerings for three years from the qualification date of the offering statement. Before the expiration of the three-year period, issuers may also file a new offering statement for a continuous or delayed offering that includes any unsold securities covered by the earlier offering, effectively allowing such unsold securities to be carried forward. The earlier offering statement will be deemed terminated as of the qualification date of the new offering statement. Issuers may sell securities on a continuous or delayed basis only if they are current with the ongoing reporting requirements for Tier 2 issuers at the time of such sale.[8]

In addition, continuous or delayed offerings are also available for securities:

- to be offered or sold solely by or on behalf of a person or persons other than the issuer (or a parent or subsidiary of the issuer);
- to be offered or sold pursuant to a dividend or interest reinvestment plan or an employee benefit plan of the issuer;
- to be issued upon the exercise of outstanding options, warrants or rights;
- to be issued upon the conversion of other outstanding securities; or
- pledged as collateral.

F. Treatment under State Securities Laws

The two tiers of Regulation A+ offerings differ greatly in their treatment under state securities laws.

Tier 1

Consistent with the existing Regulation A exemption, Tier 1 offerings will remain subject to applicable state law requirements.

Tier 2

Under the final rules, securities offered or sold to "qualified purchasers" are preempted from otherwise applicable state securities law registration and qualification requirements. A qualified purchaser is broadly defined as any person to whom securities are offered or sold in a Tier 2 offering.

Despite broad pre-emption, states retain important powers under Section 18(c) of the Securities Act with respect to Tier 2 offerings. For example, states may:

- investigate and prosecute fraudulent securities transactions;
- require issuers to file offering materials filed with the SEC; and
- enforce filing and fee requirements.

The requirement to file the offering statement publicly not less than 21 calendar days before qualification facilitates the ability of state regulators to require issuers to make notice filings of offering materials and assess any filing fees. As a result, issuers conducting Tier 2 offerings must still remain vigilant with respect to state-law requirements.

As described more fully below, Tier 2 issuers are also permitted to register securities on a national securities exchange.

G. Offering Statements

Issuers must file their offering statements and all other documents submitted in conjunction with Regulation A+ electronically on EDGAR. There are no filing fees associated with the process. Offering statements will be declared qualified by the SEC when a "notice of qualification" is issued, which is analogous to a notice of effectiveness in a registered offering. SEC officials have noted that the review of Regulation A+ offering statements will be conducted by the industry group covering the specific issuer.

Issuers may initially elect to file draft offering statements for non-public (*i.e.,* confidential) review by the SEC. However, all non-public submissions, amendments, and correspondence with the SEC must be filed publicly not less than 21 calendar days before qualification of the offering statement. Unlike emerging growth companies conducting a registered public offering, the timing requirement does not depend on whether or not the issuer plans to conduct a road show--the relevant measurement date is the date of qualification. In addition, correspondence related to the prior non-public filings must be made available before the qualification of the offering statement, which is earlier than when correspondence related to non-public filings is generally available in the context of a registered offering. Importantly, the option of non-public review is only available to issuers who have *not* previously sold securities pursuant to a qualified offering statement under Regulation A or a Securities Act registration statement.

In addition, a broker-dealer must deliver the preliminary offering circular to prospective purchasers at least 48 hours in advance of sale, assuming the issuer is not already subject to Tier 2 reporting obligations.

Regulation A+ offering circulars will be filed on Form 1-A, which consists of three parts:

- *Part I: Notification*. Captures key information about the issuer and the offering.
- *Part II: Information Required in Offering Circular*. Disclosure narrative and financial statements are included here.
- *Part III: Exhibits*. Exhibit index and exhibits to the offering statement.

Disclosure in Part II of Form 1-A (information required in offering circular) can either follow the Offering Circular disclosure format[9] or include the information required in Part I of Form S-1 or

Form S-11, as appropriate. Offering Circular disclosure for Tier 2 offerings will be similar in scope to disclosures made by a smaller reporting company for a registered offering.

All issuers under Regulation A+ will be required to file balance sheets and other required financial statements as of the two most recently completed fiscal years (or for such shorter time they have been in existence); however, only Tier 2 issuers are required to present audited financial statements audited in accordance with U.S. Generally Accepted Auditing Standards (GAAS) or the standards of the Public Company Accounting Oversight Board (PCAOB).[10] An offering statement cannot be qualified if the date of the most recent balance sheet is more than nine months before the date of qualification.

Both Tier 1 and Tier 2 issuers must file summary information after the termination or completion of a Regulation A+ offering. Tier 1 issuers must publicly file Part I of the Form 1-Z exit report with the SEC within 30 calendar days of termination or completion of an offering, including summary information about the offering and proceeds. Tier 2 issuers' obligations are described more fully in "Ongoing Reporting" below.

H. Securities Act Liability

Issuers will be subject to Securities Act liability for offerings made pursuant to Regulation A+. The JOBS Act expressly provides for Section 12(a)(2) liability for any person offering or selling securities under Regulation A. Additionally, antifraud liability provisions under Section 17 of the Securities Act will also apply to Regulation A+ offerings. These liabilities also extend to solicitation materials.

I. Offering Communications

Testing-the-waters communications will be permitted both before and after the filing of an offering statement relating to offerings under Regulation A+, as long as the issuer complies with specific rules on filing and disclaimers. Unlike testing-the-waters materials that are generally not made public in connection with registered offerings by emerging growth companies, solicitation materials must be filed as an exhibit when the related offering statement is submitted for review.

Solicitation materials used *before* qualification will be required to bear a legend stating that no money or consideration is being solicited and will not be accepted, no offer to buy securities can be accepted and any such offer can be withdrawn before qualification, and a person's indication of interest does not create a commitment. Testing-the-waters materials used *after* the offering statement is publicly filed must be accompanied by a current preliminary offering circular or contain a notice of how to obtain it. These solicitation materials and the preliminary offering circular are required to be updated and redistributed if they become inadequate or inaccurate in any material respect.

In addition, the Commission confirmed that regularly released factual business communications do not constitute solicitation materials (consistent with the existing exemption under Rule 169 of the Securities Act).

J. Listing on a National Stock Exchange

Tier 2 issuers will be permitted to register securities for sale on an exchange using Exchange Act Form 8-A registration (instead of a Form 10, which would generally be more costly and take significantly more time to prepare), provided that issuers use the Part 1 of Form S-1 or, in the case of a real estate investment trust, Part 1 of Form S-11 disclosure model in the offering circular. However, a Form 8-A may only be used if it is being filed in conjunction with the qualification or requalification of a related Form 1-A; if the Form 8-A is not being filed concurrently with Form 1-A, issuers must use the longer Form 10. In addition, if a Tier 2 issuer is registering securities under the Exchange Act, the financial statements must be audited in accordance with the standards of the PCAOB by a PCAOB-registered firm.[11]

Upon effectiveness of a Form 8-A, the issuer will become an Exchange Act reporting company, and the ongoing reporting obligations under Regulation A+ will be suspended for the duration of a company's reporting obligations under Section 13 of the Exchange Act. Additionally, the Commission stated that issuers using this pathway will be considered "emerging growth companies" if they otherwise qualify as such.

K. Ongoing Reporting

Tier 2 issuers are subject to ongoing reporting requirements. Tier 2 issuers are required to file:

- *Annual reports on Form 1-K*: These annual reports must be filed within 120 calendar days after the end of the fiscal year and must include financial statements audited in accordance with GAAS or the standards of the PCAOB.[12]

- *Semiannual reports on Form 1-SA*: These reports must be filed within 90 calendar days after the end of the semiannual period.[13]

- *Current event reports on Form 1-U*: These reports generally must be filed within four business days after the occurrence of the event being reported. Events required to be reported include fundamental changes, material modifications to the rights of securityholders, and changes in control of issuer.

- *Part II of Form 1-Z*: Issuers must provide notice to the SEC of the suspension of their ongoing reporting obligations.

Any successor issuer must continue to file Regulation A+ ongoing reports, regardless of whether the successor was originally subject to Regulation A+ reporting requirements.[14]

In addition to providing information to investors, a Tier 2 issuer's ongoing reports will qualify as that type of information about an issuer that a broker-dealer must review before publishing a quotation for a security in a quotation medium, as required by Rule 15c2-11 under the Exchange Act.

A Tier 2 issuer that might otherwise be subject to Section 12(g) reporting under the Exchange Act is conditionally exempt from the 12(g) reporting requirement if it had a public float of less than $75 million as of the last business day of its most recently completed semiannual period or, if it had no public float, had annual revenues of less than $50 million as of its most recently completed fiscal year. A Tier 2 issuer that exceeds the Section 12(g) threshold will have the benefit of a two-year transition period.

Importantly, Tier 2 ongoing reports will not constitute "reasonably current information" on a year-round basis for purposes of resales under Rule 144 (which would be applicable for affiliates) or Rule 144A. Issuers may need to file quarterly financial statements on Form 1-U to meet these requirements.

A Tier 2 issuer may suspend its obligation to file ongoing reports at any time after completion of reporting for the fiscal year in which the offering statement was qualified, upon filing an exit report on Form 1-Z. This suspension is only permitted if the issuer has filed all required ongoing reports for the shorter of (1) the period since the issuer became subject to such reporting obligation or (2) its three most recently completed fiscal years and the applicable portion of the current year. Additionally, not more than 300 persons can hold of record the securities of each class to which the offering statement relates and there must be no ongoing offers and sales made in reliance on a qualified offering statement. Tier 2 issuers must supply the information in Part I of Form 1-Z, unless this information was previously reported on Form 1-K. Tier 2 issuers will additionally be required to complete Part II of Form 1-Z in order to notify investors and the SEC that it will no longer file and provide annual reports.

As discussed above, Regulation A+ reporting requirements for Tier 2 issuers are suspended automatically if the issuer becomes a reporting company under the Exchange Act by filing Form 8-A.

L. Limitations with Respect to Investors

Certain investors in Tier 2 offerings will be subject to investment limitations, and it is the obligation of the issuer to notify investors of these limitations. Non-accredited, natural persons may invest no more than 10% of the greater of the purchaser's annual income or net worth.[15] Non-accredited, non-natural persons may invest no more than 10% of the greater of the purchaser's revenue or net assets, as of the most recent fiscal year end. Issuers are not required to verify compliance and may rely on representations of the applicable investor.

These investment limitations do not, however, apply to investors who qualify as accredited investors under Rule 501 of Regulation D, and there are no limitations with respect to investors for Regulation A+ securities that will be listed on a national securities exchange upon qualification.

If the investor is purchasing securities that are convertible into, or exercisable or exchangeable for, other securities, the investment limitation must be calculated to include the aggregate conversion, exercise, or exchange price of such securities, in addition to the purchase price of the convertible security.

III. Further Thoughts

While Regulation A+ provides issuers with an alternative for raising capital that addresses many of the perceived limitations of the existing Regulation A exemption, including the relatively low offering cap of $5 million and the need to comply with both state and federal securities laws, certain considerations may dictate its ultimate acceptance, and whether Tier 2 offerings in particular will truly constitute the "IPO-lite" alternative to full registration for which some commentators have long hoped.

First, for issuers seeking to list on a national securities exchange for potential liquidity purposes, careful consideration should be given as to what advantages a Tier 2 Regulation A+ offering presents when compared to a typical IPO. For example, while Regulation A+ allows listing by means of a short-form Form 8-A, the issuer will then become subject to the full reporting requirements imposed by the Exchange Act once listed, including the Sarbanes-Oxley Act.[16] While an issuer would be considered an emerging growth company for these purposes, it would still be required to prepare S-1 level disclosure (albeit under the "smaller reporting company" standard if it meets that definition) in connection with its initial offering and then prepare and file with the SEC annual reports, quarterly reports and current reports upon the occurrence of material events. As a result, issuers and their advisors should consider whether the customary IPO route, with no limit on the types of investors or aggregate offering size imposed by Tier 2, may be preferable in these circumstances.[17]

Second, required public disclosure of more written materials when compared with the rules that currently apply to emerging growth companies under the JOBS Act may also give certain issuers pause before using Regulation A+. While an issuer will have the opportunity to submit an offering statement for review by the SEC on a non-public basis under Regulation A+, correspondence with the SEC relating to a non-public submission will need to be publicly filed at least 21 days before qualification along with the non-public filings, which will presumably include responses to the SEC's comments. Similarly, an issuer using Regulation A+ will be required to file publicly any solicitation or test-the-waters materials with the SEC during the same period. These public disclosures prior to qualification are significant deviations from the emerging growth company IPO process otherwise provided under the JOBS Act under which the public is typically only able to review an issuer's responses to the SEC's comments well after the offering is completed and where testing-the-waters materials are not required to be publicly filed.

Third, if liquidity is not the primary consideration for the issuer, conducting an offering under Regulation D, for example, should be considered as an alternative to Regulation A+ since it imposes no ongoing reporting requirements, requires no public disclosure of the business or affairs of the issuer and is not limited as to offering size. Furthermore, as an added benefit to any investment bank or placement agent marketing such an offering, any issuance pursuant to Regulation D would not be required to comply with FINRA Rule 5110 regarding filing and disclosure of underwriting compensation, while such requirement would apply to an offering under Regulation A+.

Fourth, the ultimate use of Regulation A+ may depend on the development of a viable secondary market for securities offered under the exemption. If an issuer does not elect to list on a national exchange, reliance on OTC Pink Sheets, SecondMarket or other secondary exchanges will become necessary to ensure minimal liquidity, which may in turn depend on whether investment banks will attempt and succeed in creating a market for these securities, including initiating research coverage.[18] Indeed, SEC Commissioner Gallagher has noted that the SEC should work to create venture exchanges in order to facilitate liquidity relating to small companies.[19]

Fifth, the reporting regime imposed on an issuer conducting a Tier 2 offering without a national listing may also present some disadvantages that may argue in favor of either simply becoming an Exchange Act reporting company or conducting another type of exempt offering. For example, as discussed by Commissioner Gallagher in his comments at the March 25 open Commission meeting, Regulation A+ periodic reports would not constitute "reasonably current information" that satisfy the reporting requirements of Rule 144 and Rule 144A, such that issuers might in effect be required to provide quarterly, in addition to semiannual, updates to their disclosures.[20] Issuers should also remember that, despite ongoing reporting requirements, investors accumulating securities would *not* be required to file a Schedule 13D or Schedule 13G should they meet the relevant requirements. As a result, issuers with outstanding securities issued pursuant to Regulation A+ would have very limited means available to them to detect large accumulations of securities by a single investor on a secondary exchange.

Following adoption, the SEC will conduct a biennial study of the offering thresholds under Regulation A+, along with an effectiveness review of the impact on capital formation and investor protection within five years, to determine if any further amendments to Regulation A+ are appropriate. The initial review will likely look at whether Tier 1 is actually utilized, or if it remains too similar to the original Regulation A framework despite the increased offering limit. An important factor will be whether the North American Securities Administrators Association's multi-state coordinated review program sufficiently addresses issuers' concerns about the burden of state review, or if preemption of state law needs to be revisited in the context of Tier 1 offerings to make it a viable option. Finally, the SEC may look to other enhancements that would allow reporting issuers to use Regulation A+, developing a market for what Commissioner Gallagher has referred to as a "half-PIPE." In light of these considerations, it remains to be seen if Regulation A+ will become an effective and accessible path for small companies to raise capital.

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[1] A July 2012 report by the U.S. Government Accountability Office (the "GAO") found that there was only one qualified offering under Regulation A in 2011. *See* http://www.gao.gov/assets/600/592113.pdf, at 2.

[2] The permitted offering size is defined as "aggregate offering price" plus "aggregate sales," with "aggregate offering price" meaning the sum of all cash and other consideration to be received for the securities being offered, while "aggregate sales" means the gross proceeds for all securities sold pursuant to other Regulation A+ offering statements in the prior 12 months.

[3] Any securities that could be sold pursuant to an underwriters' overallotment option in an underwritten Regulation A+ offering presumably also count toward these limitations, meaning the

maximum base deal size in a Tier 2 firm commitment underwritten offering with a customary 15% overallotment option can only be approximately $43.5 million.

[4] According to the Adopting Release, the differing treatment of affiliated and non-affiliated selling securityholders under the rules is designed to strike a balance between facilitating exit opportunities and the insiders' informational advantages.

[5] The list of securities eligible for exemption under Regulation A+ is set forth in Section 3(b)(3) of the Securities Act. Offerings of "asset-backed securities," as defined by Section 1101(c) of Regulation AB, may not be conducted under Regulation A+.

[6] This treatment of convertible securities is consistent with Section 3(b)(3) of the Securities Act and the definition of "equity security" in Rule 405.

[7] At-the-market offerings, by or on behalf of the issuer or otherwise, are not permitted under Regulation A+.

[8] Aside from requiring adherence to the Tier 2 reporting requirements, the rules otherwise permit continuous or delayed Tier 1 offerings.

[9] Such disclosure includes, but is not limited to, (i) basic information regarding the issuer; (ii) material risks and risk factors; (iii) use of proceeds from the issuance; (iv) information regarding the issuer's business; (v) management's discussion and analysis of operations; (vi) information regarding executive officer and director compensation; (vii) any related party transactions; and (viii) a description of the offered securities and plan of distribution.

[10] For Tier 1 offerings, audited financial statements are only required to be disclosed if they are otherwise available.

[11] For Tier 2 offerings that are not registered, the financial statements of the issuer are required to be audited in accordance with either U.S. GAAS or PCAOB standards. The audit firm is not required to be PCAOB-registered.

[12] Form 1-K requires disclosures relating to (i) the issuer's business and operations for the preceding three fiscal years; (ii) related party transactions; (iii) executive officers and directors and their compensation; (iv)management's discussion and analysis of operations; and (v) two years of audited financial statements.

[13] Form 1-SA is similar to Form 10-Q and, as such, would require certain updates to financial and operational information and a less rigorous set of disclosures as compared to the Form 1-K requirements.

[14] An issuer can succeed to that class of securities in connection with a merger or similar transaction.

[15] *See* 17 CFR § 230.501(a)(5) (net worth).

[16] Regulation A+ issuers are excluded from the definition of "issuer" under Sarbanes-Oxley to the extent they do not seek a listing and become Exchange Act reporting companies.

[17] Irrespective of listing, the diligence process an issuer would have to undertake in connection with a Regulation A+ offering would likely be comparable to the diligence process of a traditional IPO, as the issuer would have Section 12(a)(2) and Section 17 liability in connection with offers or sales made by means of an offering circular or oral communications containing a material misstatement or omission.

[18] While Regulation A+ does not set forth any rules related to the publication of research by investment banks participating in a Regulation A+ offering, banks should consider whether any additional restrictions are appropriate.

[19] Commissioner Daniel M. Gallagher, "Grading the Commission's Record on Capital Formation: A+, D, or Incomplete" March 27, 2015 (http://www.sec.gov/news/speech/032715-spch-cdmg.html#.VRxA2vnF98E).

[20] Commissioner Daniel M. Gallagher, "Statement at Open Meeting on Reg A+," March 25, 2015 (http://www.sec.gov/news/statement/032515-ps-dmg-a.html#.VRXjSph0xJ0).