

PUTTING THE PLUS IN REGULATION A

Alison M. Pear, Ater Wynne LLP

Purpose

- Overview of Regulation A and why it didn't work
- Overview of Regulation A+
 - Adopting Final Rule Release had 454 pages (of which, 16 pages are ironically for the Paperwork Reduction Act)
 - There will be some glossing over the nuances
- How Reg. A+ fits with capital raising
- What Reg. A+ will really mean

What is Regulation A?

- Regulation A was last updated in 1992.
- Regulation A is a regulation with an identity crisis.
- It is technically an exemption from registration of a securities but it looks an awful lot like registration



The Minuses of Regulation A

- From 2009 to 2014, there were an average of 6 Reg A offerings qualified per year
 - Compared to 10,671 Rule 506 placements in 2014
- A lot of work for not a lot of capital
 - Qualification involved significant disclosure requirements to raise a maximum of \$5M
 - No state pre-emptive laws meant issues with state registration



Regulation A “+”

- Final Rules were adopted on March 25, 2015
- Final Rules become effective on June 19, 2015
- Set up as Tiers of Compliance
 - Tier 1: Available for up to \$20 million
 - Tier 2: Available for up to \$50 million
 - Under \$20M can choose Tier 1 or 2



NOT CROWDFUNDING

PLEASE PLEASE PLEASE STOP CALLING
THINGS CROWDFUNDING.



Offering Amount

- TIER 1: \$20M/year
 - ▣ Selling security holders limited to 30% in first Reg A offering and 12 months after
 - ▣ Affiliate selling security holders always limited to \$6M
- TIER 2: \$50M/year
 - ▣ Selling security holders limited to 30% in first Reg A offering and 12 months after
 - ▣ Affiliate selling security holders always limited to \$15M
 - ▣ Tier 2 unaccredited investor limit: Non-accredited investors can purchase no more than 10% of the greater of the investor's annual income/revenue or net worth/assets (unless securities will be listed on an exchange upon qualification)

Eligibility Limits

- Only issuers organized and principal place of business in the United States or Canada
- NO
 - SEC reporting companies
 - investment companies
 - blank check companies
 - delinquent Reg A issuers
 - Exchange Act reporters deregistered for delinquency in the past 5 years
 - issuers subject to SEC order or other bad actor disqualification

Types of Securities

- Equity securities, debt securities, warrants, and debt securities convertible into equity securities
- No asset-backed securities or oil, gas or mineral rights

Procedures

- Must submit to SEC offering circular, similar to prospectus
- Offering circular must be approved by the SEC before sales may be made, similar to prospectus
- Delivery requirements with respect to preliminary offering circular prior to qualification and final offering circular after sale is made, similar to prospectus



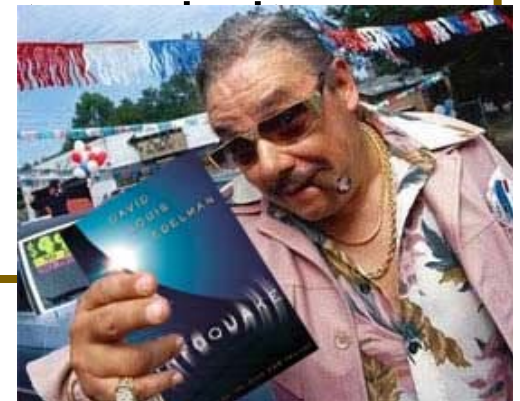
Disclosures

- Part I is a fill in form with various blanks for basic information (filed on EDGAR, not distributed)
- Part II is narrative disclosures pursuant to one of two formats, but both formats are similar to registration statement information
- Part III is exhibits
- Only Tier 2 Requires Audited Financial Statements



Solicitations

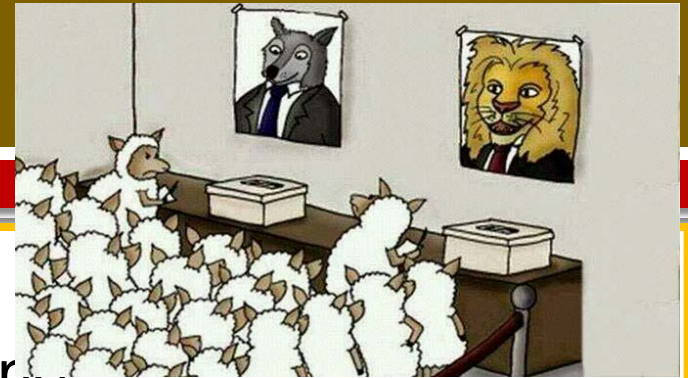
- Testing the waters permitted but materials must be filed
- General solicitation permitted
 - If preliminary offering circular filed, advertisement must include offering circular or reference to website where available
 - If offering circular qualified, advertisement must include offering circular or reference



Status of Issued Securities

- Securities issued pursuant to Reg. A are NOT restricted securities – Freely Tradable
- Tier 2 reporting satisfies the requirement that brokers review specified information before publishing a quote
 - SEC wants/expects a market to develop
- Ongoing reporting associated with Tier 2 does not constitute current information for Rule 144, unless issuer voluntarily files quarterly reports

Ongoing Reporting



- TIER 1: No Reg. A related reporting,
 - BUT may become subject to Exchange Act registration requirements at certain asset (>\$10M) and beneficial owner thresholds (>500 unaccredited), which means full public reporting

- TIER 2: Ongoing annual, semi-annual and interim reporting for at least year of qualification,
 - BUT exempt from Exchange Act registration (see above) if current in Reg. A Reports, uses registered transfer agent, and has public float of <\$75M (or revenue of <\$50M)

Integration Safe Harbor

- Offers and Sales pursuant to Reg. A will not be integrated with “prior offers and sales”
- Offers and Sales pursuant to Reg. A will not be integrated with subsequent offers and sales that are:
 - Registered
 - Exempt from registration pursuant to Rule 701 (employee benefit plans of non-public reporters)
 - Made pursuant to an employee benefit plan
 - Exempt under Reg. S (Non-US Sales)
 - Made more than 6 months after completion of offering
 - Exempt from registration under Securities Act Section 4(a)(6) (Crowdfunding)
 - Carefully done private placements?

Interaction with State Regulation

- TIER 1: Generally must register through multi-state coordinated review program from NASAA
 - ▣ It's yet to be seen if this makes life any easier
- TIER 2: Pre-empts state law
- BOTH TIERS: Still subject to state fraud enforcement and notice filings (similar to Rule 506)

Tier 1 vs. Tier 2



- Tier 1:
 - No audited financials
 - No limit on accredited investor investments
 - No on-going reporting UNLESS otherwise required to register under Exchange Act
- Tier 2:
 - More money
 - Pre-emption from state registration
 - Limited exemption from Exchange Act registration requirements

Time and Money of Reg A+

- During the period of 2012 to 2014, it took over 300 days to get a Reg. A offering qualified
- The SEC estimates preparation of the Form 1-A will take about 750 hours (75% internal; 25% external) for a cost of about \$75,000 for outside fees
- The SEC estimates ongoing reporting obligations under Tier 2 to be about 800 hours a year (75% internal; 25% external) for a cost of about \$80,000 for outside fees

Reg A+ Compared To Rule 506

- Rule 506 lets issuer raise more money
- Rule 506 has a lot less compliance costs
- Rule 506 also has pre-emption
- BUT Reg A+ lets issuer sell to unaccredited investors
- AND Reg A+ securities are freely tradable
 - Will Reg A+ trading markets develop?

Reg A+ Compared To Registration

- Reg A+ is slightly easier and cheaper than Registration
- Reg A+ may let you avoid reporting requirements associated with registration
- Reg A+ may get you pre-emption that you wouldn't get from registration
- Reg A+ may let you avoid audited financial statements

So, How “+” is it?

- Reg A+ is probably only slightly more useful than Reg A
 - SEC estimates about 250 per year
- This is really only useful for:
 - Issuers that want a slightly cheaper IPO option
 - Issuers that really want a large number of unaccredited investors
 - Maybe as an alternative PIPE market for direct offerings?
- In short, I think we'll see more of this, but I don't think its going to change the securities world as we know

Questions?



Alison M. Pear, Attorney



ATER WYNNE LLP |

1331 NW Lovejoy Street, Suite 900 | Portland, OR 97209

Direct: 503-226-8406

amp@aterwynne.com | www.aterwynne.com

Alison Pear is an attorney in Ater Wynne's Business Department. Alison has extensive experience in mergers and acquisitions, securities compliance, corporate governance, and general business law. She's worked with dozens of clients on matters ranging from high-stakes acquisitions and financing transactions to daily operational issues, and in various industries including manufacturing, pooled investment vehicles, technology, health care, banking, agribusiness and life sciences. Taking advantage of the Pacific Northwest's thriving high tech market, Alison has enjoyed the multi-faceted nature of working on transactional and corporate governance matters in the technology field, including issues facing standard-setting organizations.

Focusing much of her practice on securities work, Alison is especially proficient at assisting public reporting companies with their ongoing reporting requirements, and working with companies subject to such requirements in their more general transactional matters. Alison's securities practice also extends to assisting pooled investment vehicles, angel funds and entities exempt from registration under the Investment Company Act negotiate compliance under the various legal frameworks to which they are subject, including investment adviser and broker dealer regulations. Beyond these areas, Alison also tries to stay abreast of new developments in the securities arena, developing expertise in the newest regulations regarding general solicitation in private placements, state crowdfunding, offering platforms and Regulation A+.