



SECURITIES LAW ALERT

SEC ADOPTS FINAL RULES TO ALLOW EXCHANGE ACT REPORTING COMPANIES TO USE REGULATION A

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The SEC recently adopted final rules allowing Exchange Act reporting companies to rely on the Regulation A exemption to conduct securities offerings of up to \$50 million in a 12-month period without registering under the Securities Act.¹ The final rules also provide that companies that meet the reporting requirements of the Exchange Act will be deemed to have met the reporting requirements of Regulation A. The amendments—which are now in effect—were mandated by the Economic Growth, Regulatory Relief, and Consumer Protection Act.

BACKGROUND

Regulation A provides an exemption from registration under the Securities Act for securities offerings in a 12-month period of up to \$20 million, for Tier 1 offerings, and up to \$50 million, for Tier 2 offerings. Securities sold under Regulation A are deemed sold in a public offering and are therefore not subject to Securities Act resale limitations. Under the previous version of the rules, companies subject to the ongoing reporting requirements of Exchange Act Sections 13 or 15(d) could not use the Regulation A exemption, and issuers that had filed Tier 2 offering statements had to comply with certain periodic and current Regulation A reporting requirements.

AMENDMENTS

The final rules amend Rule 251 to permit companies subject to the ongoing reporting requirements of Exchange Act Sections 13 or 15(d) to use Regulation A. The SEC made conforming changes to Form 1-A to reflect this expansion in eligibility.

The final rules also amend Rule 257 to provide that companies that have filed reports required by Exchange Act Sections 13 or 15(d) during the 12 months (or such shorter period that the company was required to file such reports) shall be deemed to have met the reporting

¹ The SEC's release adopting the rules is available [here](#). See SEC Release No. 33-10591; File No. S7-29-18. The SEC's fact sheet is available [here](#).

requirements of Regulation A. As long as the company remains current in its Exchange Act reporting on the due dates for periodic reports under Rule 257(b), the company's reporting obligation under Rule 257 will be deemed to have been met. If, however, the company is not current in its Exchange Act reporting on the due date for a periodic report under Rule 257(b), the company's Rule 257 reporting obligation will not be deemed to have been met and the company will have to file Regulation A reports.

SEC GUIDANCE

The release adopting the final rules contained guidance to clarify the operation of the rules in the context of a Regulation A offering by an Exchange Act reporting company:

- **New or Revised Accounting Standards:** Part F/S of Regulation A permits issuers, where applicable, to delay the implementation of new accounting standards to the extent such standards provide for delayed implementation by non-public business entities, similar to accommodations for emerging growth companies under Section 102(b) of the Jumpstart Our Business Startups Act. The release clarified that this accommodation will not apply to companies that are Exchange Act reporting companies at the time of the Regulation A offering.
- **Canadian Issuers:** The SEC also clarified that Canadian reporting company issuers, whether or not filing under the Exchange Act multijurisdictional disclosure system (MJDS), will be deemed to have met their Rule 257 reporting obligations so long as they are current on their applicable Exchange Act reporting obligations. The disclosure requirements for Canadian issuers reporting under the MJDS will continue to be established under home country standards.
- **Securities "Held of Record" for Section 12(g) Purposes:** Tier 2 securities issued by certain small reporting companies may, subject to certain conditions, be excluded from the count of securities "held of record" for purposes of registration under the Exchange Act Section 12(g). Securities issued in a Tier 2 offering by an Exchange Act reporting company that meets the requirements of the rule will be excluded from the "held of record" count for purposes of registration under Section 12(g) of the Exchange Act.

KEY TAKEAWAYS

The amendments will give eligible Exchange Act reporting companies additional flexibility in raising capital and lower their costs. The SEC noted the largest impact will be on issuers in offerings of securities that fall within Regulation A offering limits and that are not listed on a national securities exchange, since blue sky preemption is available for Tier 2 of Regulation A, but is generally not available for non-exchange-listed securities sold in registered offerings. But the amendments may also affect Regulation A issuers that are not reporting companies to the extent they compete for capital with reporting companies that are newly eligible for Regulation A. The SEC believes that the additional flexibility and lower costs may lead some issuers that are not reporting companies and that have not previously conducted a public offering to seek Regulation A financing or to become a reporting company.

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