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**EXPERTS CORNER**

# Raising capital just got a little easier

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Remember when raising funds in the capital markets was only for large companies? Did you think the IPO process was too burdensome and only possible for companies raising large dollars? Did you think the ability of small business to access the capital markets was limited?

Well, you were right, but things have changed for the better. In March 2015, the U.S. Securities and Exchange Commission (SEC) approved a new regulation that has made it much easier for small companies to raise larger amounts of capital from investors before going public. Regulation A+ took effect in June.

This concept of avoiding a full-blown public offering registration is not new. Regulation A has been in existence for more than 20 years, but in practice was not widely utilized due to a low maximum investment ceiling of $5 million, with current shareholders allowed to offer up to $1.5 million, and the requirement to comply with the securities laws of individual states ("Blue Sky" laws), which adds expense and delay. The dollar limit may have been good for early stage enterprises, but was not meaningful for more mature companies.

Under Regulation A, unlike the SEC registration process, many states had closed the door to investments that they deemed to be too risky for investors. This tended to preclude entire industries, such as technology, software and life sciences, which typically generate little or no revenue in their early years and do not see profitability for the foreseeable future.

The amended Regulation A is an attractive option for private companies to raise capital without the burden of going public. If used properly, it could be an intermediate step for companies and investors, allowing them to test the waters before being completely submersed as a public company.

With Reg A+, the SEC has created a two-tier system. Tier 1 adheres to the original Regulation A, but increases the investment threshold from $5 million to $20 million. Tier 2 increases the capital ceiling to $50 million in any 12-month period, with current shareholders allowed to offer up to $15 million of the total. This new option comes with some new reporting requirements, including audited financial statements, annual and semi-annual reports, and current-events reports. Tier 2 also limits the quantity of securities that may be purchased by non-accredited investors.

For offerings of up to $20 million, issuers can elect Tier 1 or Tier 2. Both tiers are subject to basic requirements as to issuer eligibility, disclosure and other matters. More significantly, Regulation A+ provides for an SEC review of the offering and removes the requirement to file with every state.

So who is eligible? Companies organized in and with their principal places of business located in the U.S. or Canada qualify for Regulation A+, with certain exceptions.

Companies will continue to be exempt from registration requirements so long as they engage the services of a transfer agent registered with the SEC, maintain their Tier 2 reporting obligations and are current with their annual and semi-annual reporting.

Further, similar to smaller reporting companies, they will need to have a public float of less than $75 million as of the last business day of the most recent six-month period, or in the absence of a public float, have annual revenues of less than $50 million as of the most recently completed fiscal year. A company failing to meet these requirements will have a two-year transition period before it must register its class of securities, provided it stays current with its Regulation A reporting requirements.

Regulation A+ provides a viable alternative for companies to access capital while remaining private. The new expanded capital limits can help companies in later stages of growth that are not yet ready to undergo or finance the process of a public offering. It provides a test of the "public market" and prevents the pitfalls of going public too early. It also allows founders and early stage investors to have a liquidity event, raising funds that can be reinvested to sustain growth. It is potentially an opportunity for emerging companies to raise much-needed capital without the complexity, expense and extensive reporting requirements of an IPO.

On the investor side, it is an opportunity to invest in exciting, up-and-coming companies at pre-IPO valuations, leading to more growth opportunities.

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