

AN ALERT FROM THE BDO NATIONAL ASSURANCE PRACTICE

# BDO FLASH REPORT

## SEC MATTERS



### ► SUBJECT

## SEC PROPOSES AMENDMENTS TO REGULATION A

### ► SUMMARY

On December 18<sup>th</sup>, the SEC proposed rule amendments required by Title IV of the JOBS Act. The proposed rules are intended to increase access to capital for smaller companies. The SEC proposed amendments to Regulation A to establish a streamlined process by which a private company could offer and sell up to \$50 million of securities in a twelve-month period if it complies with certain reporting requirements. Currently, Regulation A permits an exemption from the registration process for public offerings by private companies of up to \$5 million of securities in a twelve-month period. The offering document need not include audited financial statements but is subject to SEC staff review, as well as state-level registration and qualification requirements. Very few offerings have been made pursuant to Regulation A. A U.S. Government Accountability Office study identifies the costs and complexity of state law compliance as one of the reasons for this.

The proposed amendments to Regulation A would create two tiers of offerings:

- Tier 1 - A revised version of the current Regulation A, Tier 1 would permit offerings of up to \$5 million in a twelve-month period.
- Tier 2 - This new tier would permit offerings of up to \$50 million in a twelve-month period. Investors in Tier 2 offerings would be limited to purchasing no more than 10% of the greater of their net worth or annual income. State securities law requirements would be preempted for these offerings.

Companies could elect to use Tier 1 or Tier 2 for offerings up to \$5 million. Current SEC-reporting companies, certain investment companies, and other

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companies with no specific business purpose other than to acquire an unidentified company (among others) would not be eligible to use Regulation A. Tier 2 offerings would be subject to additional reporting requirements. For example, the Tier 2 offering documents would need to include audited financial statements. Additionally, after selling securities in a Tier 2 offering, companies would be required to file annual and semiannual reports and current event updates with the SEC, similar to the public company reporting requirements.

The proposal is subject to a 60-day comment period. The proposing release is available [here](#) on the SEC's website.

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