



Investor Alerts and Bulletins



Investor Bulletin: Regulation A

July 8, 2015

The SEC's Office of Investor Education and Advocacy is issuing this Investor Bulletin to educate investors about Regulation A. The SEC has recently [amended](#) Regulation A in order to create a new exemption from registration under the Securities Act, as mandated by the [Jumpstart Our Business Startups \(JOBS\) Act](#), to enhance the ability of smaller companies to raise money.

What is Regulation A?

Regulation A allows companies to offer and sell securities to the public, but with more limited disclosure requirements than what you would currently expect from publicly reporting companies. In comparison to registered offerings, smaller companies in earlier stages of development may be able to use this rule to more cost-effectively raise money.

How does Regulation A affect me?

With recent changes, Regulation A may present new opportunities for you to invest in early stage and smaller companies and businesses. ***If you take advantage of these opportunities, however, you should also be fully aware that your investment will involve risk.*** Following are some general risks to keep in mind:

- **Speculative.** Investments in startups and early-stage ventures are speculative and the businesses may fail. Unlike an investment in a mature business where there is a track record of revenue and income, a startup often relies on the development of a new business, product or service that may or may not find a market. ***The SEC does not pass upon the merits or give its approval to any securities offered.***
- **Illiquidity.** ***Even though there is no resale restriction, you may need to hold your investment for an indefinite period of time.*** If the securities are not to be listed on an exchange where you can quickly and easily trade the securities, you will have to locate an interested buyer when you do seek to resell your investment.

If I want to invest, what do I need to know?

Regulation A allows companies to raise money under two different *tiers*. ***If you are interested in investing in a company relying on Regulation A to sell its securities, then it is very important for you to know which tier the offering is being conducted under.*** Companies are required to indicate the tier their offerings are being conducted under on the cover of their primary disclosure document—the *offering circular*. The two different tiers mean two different types of investments for you. Regardless of the tier, however, any offering under Regulation A is subject to both federal and relevant state jurisdiction for any fraudulent and other unlawful conduct.

Tier 1

Under Tier 1, a company can raise up to \$20 million in any 12-month period. ***In connection with any offering under Regulation A, all investors must be provided with, or given information to access, an offering circular.*** For Tier 1 offerings, this offering circular must also be filed with, and is subject to review and *qualification* by, the staff at the SEC as well as by the securities regulator in the states where the offering is being conducted. There may be additional materials that you receive in addition to the offering circular.

Qualification. For both tiers under Regulation A, a company can only accept payment for the sale of its securities once its offering materials have been qualified by the staff at the SEC. Additionally, companies that are conducting a Tier 1 offering must generally have their offering materials qualified by state securities regulators in the states in which the company plans to sell its securities. ***It is therefore important to know whether an offering has been qualified. Investors, however, should understand that the SEC's qualification of an offering statement does not mean that the SEC has assessed the accuracy of the offering statement or the merits of the securities offered .***

It is important that you review the information disclosed in the offering circular before making your investment decision. The offering circular will contain important information such as information about the offering and the securities offered, risks of the investment, use of proceeds, any *selling shareholders*, the company's business, management, performance, plans and financial statements. The financial statements disclosed in a Tier 1 offering do not have to be audited by an independent accountant.

One notable distinction about investing in a Tier 1 offering is that companies relying on Tier 1 do not have ongoing reporting requirements other than a final report on the status of the offering. Accordingly, you will not have the regular flow of company information that you are familiar with when investing in companies listed on the NYSE or NASDAQ, for example.

Tier 2

Companies offering securities under Tier 2 can offer up to \$50 million in any 12-month period. ***As with Tier 1, all investors must be provided with, or given information to access, an offering circular.*** For Tier 2 offerings, the offering circular is subject to review and *qualification* by the staff at the SEC, but is not subject to review by state securities regulators.

It is similarly important that you review the information in the offering circular to learn about what you are investing in. The offering circular will contain important information such as information about the offering and the securities offered, risks of the investment, use of proceeds, any *selling shareholders*, the company's business, management, performance, plans and financial statements. Financial statements disclosed in a Tier 2 offering have to be audited by an independent accountant.

Selling shareholders. For both tiers under Regulation A, companies can include shares in their offerings held by other shareholders. In this case, your investment may be a purchase of shares from an existing shareholder. It is worthwhile to note that your investment in these resale shares will not be used to fund the company's future development and plans. ***The offering circular will disclose whether any shares in the offering are being offered by an existing shareholder.***

Companies offering securities under Tier 2 become subject to ongoing reporting requirements. Like public companies that regularly disclose their financial results, companies

raising money under Tier 2 will also file regular reports with the SEC. However, unlike the quarterly reporting that you may be use to, Tier 2 companies are only required to file a semiannual and annual report as well as interim current reports upon the occurrence of certain enumerated events.

Securities offered under Tier 2, however, may be listed on a national exchange to the extent that the company applies for listing and meets the listing requirements for that particular exchange.

In such circumstances, the company would be required to comply with the more extensive ongoing reporting requirements of public companies including, for example, the requirement to file quarterly reports.

Am I limited in whether and how much I can invest?

There are **no limitations** on whether you can invest, or how much you can invest, if you are investing **in an offering relying on Tier 1 of Regulation A**.

If, however, you are offered an opportunity to invest:

- in a **Tier 2 offering**;
- you are **not an accredited investor**; and
- the **securities are not going to be listed on a national securities exchange** upon qualification;

there are **some investment limitations** of which you should be aware. In such circumstances, individual investors are limited in how much they can invest to no more than 10% of the greater of the person’s, alone or together with a spouse, annual income or net worth (excluding the value of the person’s primary residence and any loans secured by the residence (up to the value of the residence)).

Accredited investor. An individual will be considered an **accredited investor** if he or she:

- earned income that exceeded \$200,000 (or \$300,000 together with a spouse) in each of the prior two years, and reasonably expects the same for the current year, **OR**
- has a net worth over \$1 million, either alone or together with a spouse (excluding the value of the person’s primary residence and any loans secured by the residence (up to the value of the residence)).

How do I stay informed about my investment?

Companies conducting offerings under either Tier 1 or Tier 2 of Regulation A must file disclosure information with the SEC using EDGAR. Companies relying on Tier 2 have ongoing reporting requirements and these reports can also be found on EDGAR. Following are descriptions of the forms related to a Regulation A offering:

<u>Form</u>	<u>Description</u>	<u>Tier 1</u>	<u>Tier 2</u>
1-A	The <i>offering statement</i> which includes the <i>offering circular</i> and other disclosure about the offering.	■	■
1-Z	The <i>exit report</i> that details the termination or completion of an offering.	■	■

Companies relying on Tier 2 can instead disclose this on Form 1-K.

1-K	The <i>annual report</i> to be filed within 120 days after the end of the fiscal year that includes audited financial statements for the year, a discussion of the company's financial results for the year and information about the company's business and management, related-party transactions and share ownership.	<input type="checkbox"/>	■
1-SA	The <i>semiannual report</i> to be filed within 90 days after the end of the semiannual period that includes unaudited interim financial statements and a discussion of the company's financial results for the period.	<input type="checkbox"/>	■
1-U	The <i>current report</i> to be filed within four business days of certain events including a fundamental change, bankruptcy, change in accountant, non-reliance on prior financial statements or audit report, change in control and departure of officers.	<input type="checkbox"/>	■

Where can I go for help?

If you have a question or concern about an investment, or you think you have encountered fraud, please contact the SEC, FINRA or your state securities regulator to report the fraud and to get assistance.

[U.S. Securities and Exchange Commission](#)

Office of Investor Education and Advocacy
100 F Street, NE
Washington, D.C. 20549-0213
(800) 732-0330

[Financial Industry Regulatory Authority \(FINRA\)](#)

FINRA Complaints and Tips
9509 Key West Avenue
Rockville, Maryland 20850
(301) 590-6500

[North American Securities Administrators Association \(NASAA\)](#)

750 First Street, NE
Suite 1140
Washington, D.C. 20002
(202) 737-0900

Additional Information

For the text of the rule revising Regulation A, see the [final rule](#) by the SEC.

For more information about accredited investors, see our [Investor Bulletin](#).

For information on how to search for company documents, such as Forms 8-K, in the SEC's EDGAR database, see [Using EDGAR - Researching Public Companies](#).

For another resource for using EDGAR, see [Researching Public Companies Through EDGAR: A Guide for Investors](#).

For additional investor educational information, see the SEC's website for individual investors, [investor.gov](#).

The Office of Investor Education and Advocacy has provided this information as a service to investors. It is neither a legal interpretation nor a statement of SEC policy. If you have questions concerning the meaning or application of a particular law or rule, please consult with an attorney who specializes in securities law.

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