

February 12, 2019

Regulation A Now Available to Public Companies

Effective January 31, 2019, SEC rules now allow public reporting companies to rely on the Regulation A (“Reg A”) exemption from registration for certain securities offerings. Reg A provides an exemption from registration under the Securities Act of 1933 for offerings of securities up to \$20M for a Tier 1 offering and up to \$50M for a Tier 2 offering. Tier 1 offerings do not require audited financial statements or ongoing reporting with the SEC, while Tier 2 offerings require both audited financial statements and ongoing reporting. Under the amended Rule 257, a reporting company’s reports under the Securities Exchange Act of 1934 can now be used to satisfy the Reg A reporting requirements, so that a Reg A offering would not require any additional reporting by a reporting company.

Particularly for smaller reporting companies, Reg A offers advantages over the use of another exemption, such as those available under Regulation D, or over the use of a registration statement on Form S-1. Those advantages include:

- the ability of issuers under Reg A to “test the waters” for investor interest before filing an offering circular;
- the fact that securities sold under Reg A are considered unrestricted for the purposes of buyer resale, which means that the required holding periods under Rule 144 do not apply; and
- the fact that Reg A Tier 2 offerings by issuers who are not listed on a national exchange preempt state law securities registration requirements, unlike S-1 registrations by those issuers.

Companies that are eligible to use Form S-3 are unlikely to forgo the benefits of an S-3 registration for a Reg A offering, but companies that are not eligible to use Form S-3 and are not listed on a national exchange may find Reg A an attractive alternative.

Related Practices

Corporate
Securities & Capital Markets



The members of Michael Best's Securities and Capital Markets Group help clients with public offerings of securities under Regulation A and SEC registration statements on Forms S-1, S-3, and S-8 and with private offerings under Regulation D and other exemptions from the registration requirements.

Related People

Michael Altman

Partner

mhaltman@michaelbest.com

T 414.225.4932

Joshua Erekson

Partner

jberekson@michaelbest.com

T 801.833.0505

James Kruse

Partner

jrkruse@michaelbest.com

T 801.924.4127

Kevin Timken

Partner

kctimken@michaelbest.com

T 801.924.4124

Betsy Voter

Partner

btvoter@michaelbest.com

T 801.924.4105