OTTEN JOHNSON
ROBINSON NEFF + RAGONETTI

Deep roots reach higher.
Developing deals, navigating complex regulatory hurdles, responding to disputes, growing an enterprise – experience the difference that law elevated makes.

BUSINESS TRANSACTIONS & TAX PRACTICE GROUP | JULY 2015

Otten Johnson Alert -

SEC Adopts Regulation A+ Rules Creating an Exemption from Registration for Offerings up to $50M

On March 25, 2015, the Securities and Exchange Commission (SEC) adopted final rules intended to facilitate smaller companies' access to capital and to provide investors with more investment choices. The final rules became effective on June 19, 2015. The new rules update an existing exemption known as Regulation A. The SEC was mandated to create these rules by Title IV of the Jumpstart Our Business Startups (JOBS) Act, and the updated exemption is often referred to as Regulation A+.

History of Regulation A
Regulation A is a longstanding exemption from registration that permits unregistered public offerings of up to $5 million of securities in any 12-month period (with no more than $1.5 million being offered by existing owners of the company). The Regulation A disclosure document, which required SEC review, combined with the requirement to have separate state law qualification made the Regulation A exemption burdensome in comparison to other available exemptions and cost prohibitive in relation to the amount that could be raised. For these reasons the prior Regulation A was rarely used, even though the stock issued under the exemption is not "restricted stock" and is freely tradable by non-affiliates of the issuer.

Regulation A+
Under the new rules, most private companies can offer and sell up to $50 million of securities in a 12-month period, subject to certain eligibility, disclosure and reporting requirements. Companies using Regulation A+ can advertise the offering, and anyone can invest subject to certain dollar amount limitations for non-accredited investors.

The final rules provide two tiers of offerings:

(1) Tier 1 – securities offerings of up to $20 million in a 12-month period, with not more than $6 million in offers by selling security-holders that are affiliates of the issuer.

(2) Tier 2 – securities offerings of up to $50 million in a 12-month period, with not more than $15 million in offers by selling security-holders that are affiliates of the issuer.

The rules further limit secondary sales by affiliates to no more than 30% of an initial Regulation A+ offering, including subsequent Regulation A+ offerings made in the first 12 months following the initial offering.

The rules provide for the preemption of state securities law registration and qualification requirements for securities offered or sold to "qualified purchasers," defined to be any person to whom securities are offered or sold under a Tier 2 offering. For amounts up to $20 million, companies are able to choose whether to conduct a Tier 1 or Tier 2 offering.

Both tiers are subject to basic requirements as to issuer eligibility and disclosure that arise from the prior Regulation A provisions. In addition both tiers will now permit companies to submit draft offering statements for confidential review by the SEC staff before filing, permit continued use of solicitation materials after filing the offering statement, require electronic filing, and otherwise align Regulation A+ with current practices for registered offerings.

Even with preemption of state law, States will retain their full anti-fraud powers and may require issuers using Regulation A+ to file their offering documents with the State.

Conclusion
Regulation A+ is like a mini-IPO market for private companies to offer their shares publicly without the full SEC registration and reporting burdens. However, Regulation A+ has some compliance obligations, including an offering statement that is subject to SEC review and comment, audited financial statements, and semi-annual reporting obligations for offerings greater than $20 million. Given its recent effective date, whether the changes to Regulation A will be sufficient to entice companies to begin using it to raise capital is still an open issue. Although a few examples of companies that may want to use the Regulation A+ exemption include:

(1) Closely held companies that are profitable and have steady growth.

(2) Closely held companies with owners who want liquidity and do not want to sell the company or give up control to private equity investors.

(3) Real estate developers looking for funding alternatives from traditional loans (or interested in soliciting investment from those in the community).

Otten Johnson's attorneys have substantial experience with helping clients navigate business issues like those highlighted in this alert. For more information, or for help evaluating your current situation, contact any of the attorneys in the Business Transactions & Tax practice group.

AUTHOR:
Trevor A. Crow

....

Colorado Real Estate Blog—Otten Johnson hosts a blog about development, financing and other property news in Colorado. Our attorneys are posting information and commentary on legal issues and business developments related to the real estate industry in Colorado and the West. Check it out: rockymountainrealestatelaw.com.

....

Our lawyers are pleased to present timely, topical issue alerts on the latest legal developments, trends and other subjects of interest to our clients and colleagues. Otten Johnson publishes Otten Johnson Alerts on a monthly basis. If you do not wish to receive future Otten Johnson Alerts, you may unsubscribe by clicking the "opt out" link below. This Otten Johnson Alert has been prepared for informational purposes only and does not constitute legal advice or the opinion of Otten Johnson. Receipt of this summary does not create an attorney-client relationship between you and Otten Johnson. You should not act or rely on any information in this article without seeking the advice of an attorney. Otten Johnson provides legal advice only after being engaged to do so by a client with respect to particular facts and circumstances.

Click here to read our full disclaimer.

....

Please visit our website:ottenjohnson.com.

950 17TH STREET, SUITE 1600 | DENVER, CO 80202 | T 303.825.8400 | F 303.825.6525 | ottenjohnson.com

Share this email:

Manage your preferences | Opt out using TrueRemove™
Got this as a forward? Sign up to receive our future emails.
View this email online.

info@ottenjohnson.com ojalerts@ottenjohnson.com
Denver, CO, CO | 80202 US

This email was sent to .
To continue receiving our emails, add us to your address book.