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## **NEWS RELEASE – JOBS ACT UPDATE**

**December 28, 2013**

On December 18, 2013, an open meeting of the Commissioners of the Securities and Exchange Commission was held to consider approval of proposed rules related to implementation of Title IV of the Jumpstart Our Business Start Ups (JOBS) Act, commonly referred to as “Regulation A+.”

The Regulation A+ provisions of the JOBS Act provided for an increase in the offering cap to \$50 million in a trailing 12 month period and reaffirmed general solicitation and the free tradeability, as well as the “testing the waters” capability, associated with securities offered under Regulation A.

KVCF was cited over twenty times in the proposed rules on various issues upon which the Firm commented. “There are various aspects of the proposal where we will continue to work with the Commission,” said Rob Kaplan, Managing Partner, Practices, “but it is richly satisfying to see Commission produce a proposal which overall appears to be a well-crafted scheme for the genesis of a new public securities market in the United States.”

The proposed rules being considered by the Commission would update and expand the Regulation A exemption by creating the following two tiers of Regulation A offerings:

- Tier 1 – consists of those offerings already covered by Regulation A, or offerings of up to \$5 million in a trailing 12-month period, including up to \$1.5 million for the account of selling security-holders.
- Tier 2 – offerings of up to \$50 million in a trailing 12-month period, including up to \$15 million for the account of selling security-holders.

For offerings up to \$5 million, the company could elect whether to proceed under Tier 1 or 2.

The proposed rules also would update Regulation A to among other things:

- Permit companies to submit draft offering statements for non-public SEC review prior to filing.
- Permit the use of “testing the waters” solicitation materials both before and after filing of the offering statement.
- Modernize the qualification, communications, and offering process in Regulation A to reflect analogous provisions of the Securities Act registration process, including requiring electronic filing of offering materials.

Tier 2 offerings would also be subject to the following requirements:

- Investors would be limited to purchasing in an offering no more than 10 percent of the greater of the investor’s annual income or net worth.
- The financial statements included in the offering circular would be required to be audited.
- The company would be required to file annual and semiannual reports and current event updates that are similar to the requirements for public company reporting.

Regulation A would be available to companies organized in and with their principal place of business in the United States or Canada, as is currently the case under Regulation A. As proposed, the exemption would not be available to companies that:

- Are already SEC reporting companies and certain investment companies.
- Have no specific business plan or purpose or have indicated their business plan is to engage in a merger or acquisition with an unidentified company.
- Are seeking to offer and sell asset-backed securities or fractional undivided interests in oil, gas, or other mineral rights.
- Have not filed the ongoing reports required by the proposed rules during the preceding two years.
- Are or have been subject to a Commission order revoking the company's registration under the Exchange Act during the preceding five years.
- Are disqualified under the proposed "bad actor" disqualification rules.

#### *Preemption of Blue Sky Law*

Under current Regulation A, offerings are subject to registration and qualification requirements in the states where the offering is conducted unless a state-level exemption is available.

Under the proposed rules, "qualified purchasers" would be defined as offerees in Tier 1 or 2 offerings and purchasers in Tier 2 offerings. Thus, state regulation would be pre-empted until the issuer intended to consummate a sale in a Tier 1 offering, but in Tier 2 offerings, state regulation would be preempted altogether.

#### **What's Next**

The Commission will seek public comment on the proposed rules for 60 days. The Commission will then review the comments and determine whether to adopt the proposed rules.

Please be looking for further updates from our Firm concerning this important piece of regulation, as well as discussions on the opportunities afforded by Regulation A+ in the near future.

For further information regarding the JOBS ACT, please contact Rob Kaplan at [rkaplan@kv-legal.com](mailto:rkaplan@kv-legal.com) or 804.823.4000.