



NEWS RELEASE – REGULATION A+ ADOPTED BY SEC

On March 25, 2015, the Securities and Exchange Commission (“SEC”) held an open meeting to vote on adoption of rules and forms related to the offer and sale of securities pursuant to Section 3(b) of the Securities Act of 1933 to implement Section 401 of the Jumpstart Our Business Startups Act, otherwise known as “Regulation A+”.

The proposed rule was promulgated in December, 2013, and was well received by the private markets.

Perhaps the most important issue that the private market has been waiting to hear on was the provision for preemption of state blue-sky review of Tier 2 offerings contained in the proposed rules. On that point, the final rules preempt state review, maintaining the proposed definition of “qualified purchaser”.

As adopted, the rules include several changes to what was previously proposed, including the following:

Tier 1 offerings can now raise up to \$20 million in proceeds in a 12-month period, including no more than \$6 million of securities sold on behalf of selling securityholders. Tier 2 offerings are still at the statutory cap of up to \$50 million in proceeds, including no more than \$15 million of securities sold on behalf of selling securityholders, but subject to periodic review by the SEC to determine whether the threshold is reasonable beginning in 2016.

Only non-Accredited investors would be subject to the cap on investing in an initial issuance of the greater of 10% of net worth or income, and no investor will be subject to that limitation if the securities are listed (see below).

The final rule also will include a limitation on the overall amount of securities that may be sold on behalf of selling securityholders in the initial 12 months after issuance – 30% of the initial issuance amount.

An issuer of Tier II securities would be exempt from Section 12(g) under the Exchange Act, if a transfer agent is used, certain required floats are maintained and the issuer is current in its reporting.

However, the final rule will also provide for Tier 2 issuers to concurrently file a short-form Form 8-A to register a class of securities under Exchange Act Section 12(g) or 12(b)—this means that a Tier 2 issuer will, if it chooses to do so, be able to conduct a Regulation A+ offering and list on a national securities exchange.

We will be providing a more detailed analysis once we have been able to review the full text of the rules. Please stand by.

For more information or questions on Regulation A+, please contact Robert R. Kaplan, Jr. at rkaplan@kv-legal.com or 804-823-4055.