Client Alert

JOBS Act: Small Public Offerings – New Regulation A+

On April 5, 2012, President Obama signed into law the "Jumpstart Our Business Startups Act" (JOBS Act). The JOBS Act is intended to facilitate the creation of new jobs by easing securities law burdens on capital-raising activities by smaller companies. One of the bills included in Title IV—Small Company Capital Formation—requires the Securities and Exchange Commission (SEC) to create a new exemption from registration, similar to existing Regulation A, but with an increased offering amount and additional conditions.

Regulation A currently provides an exemption from the registration requirements for small initial public offerings of up to $5 million per year by non-reporting (i.e., private) companies. Regulation A, however, has not been widely used for a number of reasons, including:

- The current maximum offering size ($5 million) is too small to justify the cost and effort of using that exemption
- The securities issued in Regulation A offerings are not "covered securities" under the National Securities Market Improvement Act of 1996 (this means that companies issuing securities must also comply with state "blue sky" laws of the states in which the securities are offered)

The new regulation increases the amount that can be raised during a 12-month period from the current $5 million limit to $50 million. Because of the increased offering amount and the utility of the exemption has been improved, the new Regulation A exemption has been referred to as "Regulation A+."

Under the new regulations, companies can publicly offer and sell their securities, including on a national securities exchange. If the securities are sold on a national securities exchange or if the securities are sold only to "qualified purchasers" (a term to be defined by the SEC), the offering will also be exempt from state blue sky securities laws. In order to "test the waters" about the potential success of a proposed offering, issuers also will be allowed to solicit interest in a potential offering before they file a Regulation A offering statement with the SEC. Regulation A+ will be subject to the requirement that the issuer:

- File audited financial statements annually with the SEC
- Comply with any other terms or conditions established by the SEC, which may include requirements that the issuer file with the SEC and distribute or make available to investors an offering statement and post-offering periodic disclosures regarding its business operations, financial condition, corporate governance principles, and other matters.

Istvan Benko
310.789.1226
ibenko@troygould.com

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The civil liability provision of the Securities Act of 1933 will apply for false or misleading statements or omissions in an offering document or in oral communications involved in the offer or sale of securities.

Regulation A+ will not be available until the SEC promulgates new regulations in accordance with the JOBS Act. However, the JOBS Act does not establish a deadline for the SEC to issue these new rules and regulations.

About TroyGould

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TROYGOULD PC
1801 Century Park East • Los Angeles 90067 • 310.553.4441
www.troygould.com
