Excerpts from SEC Final Rule – Regulation A

Overview

- Two Tier System:
  - Tier 1 – offerings up to $20 million, including no more than $6 million on behalf of affiliates of the issuer.
  - Tier 2 – offerings up to $50 million, including no more than $15 million on behalf of affiliates of the issuer.
- Tier 2 differences:
  - Issuers must include audited financial statements in their offering documents and to file annual, semiannual, and current reports with the Commission.
  - With the exception of securities that will be listed on a national securities exchange upon qualification, purchasers must either be accredited investors, as that term is defined in Rule 501(a) of Regulation D, or be subject to certain limitations on their investment.
    - An investor who is not an accredited investor is limited to purchasing no more than (a) 10% of the greater of annual income or net worth (for natural persons); or (b) 10% of the greater of annual revenue or net assets at fiscal year end (for non-natural persons)
- Selling Securityholder Limits:
  - Sales by selling securityholders in an issuer's initial Reg A offering (and any subsequently qualified Reg A offering within the first 12 months) are limited to no more than 30% of the aggregate offering price.
- Testing the Waters Permitted
  - Issuers are permitted to solicit interest in a potential offering from the general public either before or after the filing of the offering statement, provided:
    - any solicitation materials used after publicly filing the offering statement are preceded or accompanied by a preliminary offering circular or contain a notice informing potential investors where and how the most current preliminary offering circular can be obtained.
- Filing Requirements
  - Pre-Qualification
    - During the prequalification period, issuers are required to deliver a preliminary offering circular to prospective purchasers at least 48 hours in advance of sale (unless the issuer is subject to, and current in, a Tier 2 ongoing reporting obligations).
    - Issuers are required to deliver a final offering circular to each purchaser no later than two business days after completion or provide them with the uniform resource locator (URL) where the final offering circular may be obtained on EDGAR.
    - The new rules permit issuers to satisfy their delivery requirements as to the final offering circular under an "access equals delivery" model when sales are made on the basis of offers conducted during the prequalification period and the final

offering circular is filed and available on the Commission's Electronic Data Gathering, Analysis and Retrieval system (EDGAR);

- Financial Statements
  - Tier 2
    - Must include audited financial statements
  - Tier 1 & 2
    - Must file balance sheets and related financial statements for the previous two fiscal year-ends (or for such shorter time that they have been in existence).
- Offering Statement
  - Must be filed with the Commission electronically on EDGAR.
  - Must be qualified by the Commission before sales may be made pursuant to Regulation A.
  - The new rules permit the non-public submission of offering statements and amendments for review by Commission staff before filing such documents with the Commission, so long as all documents are publicly filed not later than 21 calendar days before qualification.
  - Issuers must include financial statements in Form 1-A that are dated not more than nine months before the date of non-public submission, filing, or qualification.

- Ongoing Reporting Requirement
  - Tier 1
    - Issuers must provide information about sales from the offering and update certain issuer information by electronically filing a Form 1-Z exit report with the Commission no later than 30 calendar days after termination or completion of the offering.
  - Tier 2
    - Annual, semiannual, and current event reports.
    - Special financial report to cover financial periods between the most recent period included in a qualified offering statement and the issuer's first required periodic report.
    - Such reporting obligations will satisfy a broker-dealer's obligations under Exchange Act Rule 15c2-11.
    - Such reporting will not be required if issuer is subject to the requirements of Section 13 of the Exchange Acct.
    - Reporting obligations may be terminated at any time by filing a Form 1-Z exit report after completing reporting for the fiscal year in which an offering statement was qualified, so long as:
      - the securities of each class to which the offering statement relates are held of record by fewer than 300 persons, or fewer than 1,200 persons for banks or bank holding companies, and
      - offers or sales made in reliance on a qualified Tier 2 Regulation A offering statement are not ongoing.

    - The new rules eliminate the requirement that issuers file a Form 2-A with the Commission to report sales and the termination of sales made under Regulation A every six months after qualification and within 30 calendar days after the termination, completion, or final sale of securities in the offering.
- Exchange Act Registration
    - Tier 2 issuers are exempt from Exchange Act reporting requirements so long as the issuers (1) remains subject to a Tier 2 reporting obligation, (2) is current in its annual and semiannual reporting at fiscal year end, and (3) either had a public float of less than $75 million as of the last business day of its most recently completed semiannual period, or, in the absence of a public float, had annual revenues of less than $50 million as of its most recently completed fiscal year.
- Bad Actor Disqualification
    - The new rules substantially conform the “bad actor” disqualification provisions of Rule 262 to Rule 506(d) and add a disclosure requirement similar to Rule 506(e).
- Application of State Securities Laws
    - Securities sold to any person in a Tier 2 offering will be exempt from state securities law registration and qualification requirements.
- Commission STUDY
    - In addition to it obligation to review the offering limitations every two years, the Commission staff also will undertake to study and submit a report to the Commission no later than 5 years following the adoption of the amendments to Regulation A, on the impact of both the Tier 1 and Tier 2 offerings on capital formation and investor protection. The report will include, but not be limited to, a review of:
        - (1) the amount of capital raised under the amendments;
        - (2) the number of issuances and amount raised by both Tier 1 and Tier 2 offerings;
        - (3) the number of placement agents and brokers facilitating the Regulation A offerings;
        - (4) the number of Federal, State, or any other actions taken against issuers, placement agents, or brokers with respect to both Tier 1 and Tier 2 offerings; and
        - (5) whether any additional investor protections are necessary for either Tier 1 or Tier 2.
    - Based on the information contained in the report, the Commission may propose to either decrease or increase the offering limit for Tier 1, as appropriate.

Scope of Exemption

- Eligible Issuers
    - Domestic Requirement
        - Companies organized in and with their principal place of business in the United States or Canada.
    - Excluded Issuers
        - New Categories – (delinquent filers):

            - Issuers that have been subject to any order of the Commission pursuant to Section 12(j) of the Exchange Act within five years of filing of the offering statement.
            - Issuers that are required to, but that have not, filed with the Commission the ongoing reports required by the final rules during the two years immediately preceding the filing of an offering statement.
        - Old Categories:
            - companies subject to the ongoing reporting requirements of Section 13 or 15(d) of the Exchange Act
            - companies registered or required to be registered under the Investment Company Act of 1940 and BDCs;
            - blank check companies;
            - issuers of fractional undivided interests in oil or gas rights, or similar interests in other mineral rights; and
            - issuers subject to "bad actor" disqualification under Rule 262.
    - Commentary
        - Commission may consider expanding the categories of eligible issuers (for example by including non-Canadian foreign issuers, BDCs, or Exchange Act reporting companies) once the Commission has had an opportunity to observe the use of the amended Regulation A exemption and assess any new market practices as they develop.

- Eligible Securities
    - Section 3(b)(3) of the Securities Act limits the availability of any exemption enacted under Section 3(b)(2) to "equity securities, debt securities, and debt securities convertible or exchangeable into equity interests, including any guarantees of such securities.
    - The final rules exclude asset-backed securities from the list of eligible securities. Asset-backed securities are subject to the provisions of Regulation AB and other rules specifically tailored to the offering process, disclosure, and reporting requirements for such securities.
- Limitations on Secondary Sales
    - The final rules limit the amount of securities that selling securityholders can sell at the time of an issuer's first Regulation A offering and within the following 12 months to no more than 30% of the aggregate offering price of a particular offering.
    - Commentary:
        - In order to strike an appropriate balance between allowing selling securityholders continued access to avenues for liquidity in Regulation A and the concern that secondary offerings do not directly provide new capital to companies and could pose the potential risks to investors discussed above, the final rules continue to permit secondary sales but provide additional limitations on secondary sales in the first year.
    - Further, we are providing different requirements for secondary sales by affiliates and by non-affiliates:

        - Tier 1, which would consist of 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.
        - Tier 2, which would consist of 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.
    - In addition to the limits on secondary sales by affiliates, the rules also limit sales by all selling security-holders to no more than 30 percent of a particular offering in the issuer's initial Regulation A offering and subsequent Regulation A offerings for the first 12 months following the initial offering.
    - Rule 251(b)
        - We are adopting as proposed final rules that eliminate the last sentence of Rule 251(b),108 which prohibited affiliate resales unless the issuer had net income from continuing operations in at least one of its last two fiscal years.
- Offering Limit Calculation:
    - We are adopting final rules that will require issuers to aggregate the price of all securities for which qualification is currently being sought, including the securities underlying any rights to acquire that are convertible, exercisable, or exchangeable within the first year after qualification or at the discretion of the issuer.
    - As such, and consistent with the treatment of rights to acquire in the context of registered offerings, if an offering includes rights to acquire other securities at a time more than one year after qualification and the issuer does not otherwise seek to qualify such underlying securities, the aggregate offering price would not include the aggregate conversion, exercise, or exchange price of the underlying securities.
    - For purposes of calculating the price of underlying securities that use a pricing formula, as opposed to a known conversion price, the issuer will be required to use the maximum estimated price for which such securities may be converted, exercised, or exchanged.
- Investment Limitations
    - Exceptions:
        - Under the final rules, the investment limitations for purchasers in Tier 2 offerings will not apply to purchasers who qualify as accredited investors under Rule 501 of Regulation D.
        - Further, investment limitations in a Tier 2 offering will not apply to the sale of securities that will be listed on a national securities exchange upon qualification since such issuers will be required to meet the listing standards of a national securities exchange and become subject to ongoing Exchange Act reporting, resulting in additional investor protections.
    - Calculation
        - If the investor is purchasing securities that are convertible into, or exercisable or exchangeable for, other securities, if such securities are exercisable within a year or otherwise are being qualified, the investment limitation will include the aggregate conversion, exercise, or exchange price of such securities, in addition to the purchase price.
    - Verification

        - As proposed, we are adopting final rules that require issuers to notify investors of the investment limitations. Issuers may rely on a representation of compliance with the investment limitation from the investor, unless the issuer knew at the time of sale that any such representation was untrue.
- Exemption from 12(g) of the Exchange Act
    - We are adopting today final rules that exempt securities issued in a Tier 2 offering from the provisions of Section 12(g) for so long as the issuer remains subject to, and is current in (as of its fiscal year end), its Regulation A periodic reporting obligations.
    - Additionally, in order for the conditional exemption to apply, issuers are required to engage the services of a transfer agent registered with the Commission pursuant to Section 17A of the Exchange Act. The final rules also provide that the exemption from Section 12(g) is only available to companies that meet requirements similar to those in the "smaller reporting company" definition under Securities Act and Exchange Act rules:
        - As such, the conditional exemption in the final rules is limited to issuers that have a public float of less than $75 million, determined as of the last business day of its most recently completed semiannual period, or, in the absence of a public float, annual revenues of less than $50 million, as of the most recently completed fiscal year.
        - Section 12(g) registration will only be required if, on the last day of the fiscal year in which the company exceeded the public float or annual revenue threshold, the company has total assets of more than $10 million and the class of equity securities is held by more than 2,000 persons or 500 persons who are not accredited investors.

Solicitation of Interest (Testing the Waters)

- Rule
    - We are adopting testing the waters provisions in the final rules as proposed. Under the final rules, issuers will be permitted to test the waters with all potential investors and use solicitation materials both before and after the offering statement is filed, subject to issuer compliance with the rules on filing and disclaimers.
    - As proposed, the final rules require that issuers submit or file solicitation materials as an exhibit when the offering statement is either submitted for non-public review or filed (and update for substantive changes in such material after the initial nonpublic submission or filing). However, issuers are no longer required to submit solicitation materials at or before the time of first use.
- Filing Requirements
    - As proposed, testing the waters materials used by an issuer or its intermediaries after publicly filing an offering statement would be required to include a current preliminary offering circular or contain a notice informing potential investors where and how the most current preliminary offering circular can be obtained.
    - We further proposed to require issuers to publicly file their offering statements not later than 21 calendar days before qualification so that any solicitation made in the 21 calendar

days before the earliest date of potential sales of securities would be conducted using the most recent version of the preliminary offering circular.
    - Additionally, in light of the preemption of state securities laws registration requirements in the final rules for Tier 2 offerings, the 21 calendar day requirement will enable state securities regulators to require such issuers to file such materials with them for a minimum of 21 calendar days before any potential sales to investors in their respective states.
- Legend/Notice
    - We are adopting as proposed the required legends for solicitation materials. The legends provide that sales made pursuant to Regulation A are contingent upon the qualification of the offering statement.
    - Solicitation materials used before qualification will, therefore, be required to bear a legend or disclaimer indicating that: (1) no money or other consideration is being solicited, and if sent, will not be accepted; (2) no sales will be made or commitments to purchase accepted until the offering statement is qualified; and (3) a prospective purchaser's indication of interest is non-binding.
    - The final rules require, as proposed, that testing the waters materials used by an issuer or its intermediaries after the issuer publicly files an offering statement be accompanied by a current preliminary offering circular or contain a notice informing potential investors where and how the most current preliminary offering circular can be obtained. This requirement may be satisfied by providing the URL where the preliminary offering circular or the offering statement may be obtained. Solicitation materials will remain subject to the antifraud and other civil liability provisions of the federal securities laws.

Offering Statement

- Electronic Filing
    - All filing statements must be filed with the Commission electronically on EDGAR.
    - "Access equals delivery" standard for final offering circulars:
        - Under the proposed rules, issuers would be required to include a notice in any preliminary offering circular used that would inform potential investors that the issuer may satisfy its delivery obligations for the final offering circular electronically.
    - Amended Form 1-A
        - Part I: an Extensible Markup Language (XML) based fillable form, which captures key information about the issuer and its offering using an easy to complete online form, similar to Form D, with drop-down menus, indicator boxes or buttons, and text boxes, and assists issuers in determining their ability to rely on the exemption. The XML-based fillable form will provide a convenient means of assembling and transmitting information to EDGAR, without requiring the issuer to purchase or maintain additional software or technology;
        - Part II: a text file attachment containing the body of the disclosure document and financial statements, formatted in HyperText Markup Language (HTML) or

American Standard Code for Information Interchange (ASCII) to be compatible with the EDGAR filing system; and
    - Part III: text file attachments, containing the signatures, exhibits index, and the exhibits to the offering statement, formatted in HTML or ASCII to be compatible with the EDGAR filing system.
- Non-Public Submission of Draft Documents
  - We are adopting rules that will, as proposed, provide for the submission of non-public draft offering statements under Regulation A. In a change from the proposal, however, the final rules do not require an issuer seeking non-public staff review of its draft offering statement to submit such draft pursuant to the Commission's Rule 83. Instead, all such draft offering statements under Rule 252(a) shall receive non-public review
- Disclosure Requirements
  - Overview
    - The requirements largely coincide with the existing offering statement disclosure requirements of Form 1-A, such as financial statements, a description of the issuer's business operations,285 financial condition, and use of investor funds. The proposed rules, comments received on the proposed rules, and the final rules being adopted today for each of Part I, II, and III of Form 1-A are discussed in detail below.
  - Part I (Notifications)
    - The notification in Part I of Form 1-A will require disclosure in response to the following items:
      - Item 1. (Issuer Information) will require information about the issuer's identity, industry, number of employees, financial statements and capital structure, as well as contact information.
      - Item 2. (Issuer Eligibility) will require the issuer to certify that it meets various issuer eligibility criteria
      - Item 3. (Application of Rule 262 ("bad actor" disqualification and disclosure) will require the issuer to certify that no disqualifying events have occurred and to indicate whether related disclosure will be included in the offering circular (i.e., events that would have been disqualifying, but occurred before the effective date of the amendments to Regulation A).
      - Item 4. (Summary Information Regarding the Offering and other Current or Proposed Offerings) will include indicator boxes or buttons and text boxes eliciting information about the offering (including whether the issuer is conducting a Tier 1 or Tier 2 offering, amount and type of securities offered, proposed sales by selling securityholders and affiliates, type of offering, estimated aggregate sales of any concurrent offerings pursuant to Regulation A, anticipated fees in connection with the offering, and the names of audit and legal service providers, underwriters, and certain others providing services in connection with the offering).

            - Item 5. (Jurisdictions in Which Securities are to be Offered) will include information about the jurisdiction(s) in which the securities will be offered.
            - Item 6. (Unregistered Securities Issued or Sold Within One Year) will require disclosure about unregistered issuances or sales of securities within the last year, but will not include a requirement to provide the names and identities of the persons to whom unregistered securities were issued.
    - Part II (Offering Circular)
        - 1 – Narrative Disclosure
            - Part II (Offering Circular) in existing Form 1-A provides issuers with three options for their narrative disclosure: Model A, Model B, and Part I of Form S-1.
            - We proposed to eliminate the Model A question-and-answer format as a disclosure option, to update and retain Model B as a disclosure option (renaming it "Offering Circular"), and to continue to permit issuers to rely on Part I of Form S-1 to satisfy the disclosure obligations of Part II of Form 1-A
    - As adopted, Offering Circular disclosure in Part II of Form 1-A will cover:
        - Basic information about the issuer and the offering, including identification of any underwriters and disclosure of any underwriting discounts and commissions (Item 1: Cover Page of Offering Circular);
        - Table of Contents (Item 2);
        - The most significant factors that make the offering speculative or substantially risky (Item 3: Summary and Risk Factors);
        - Material disparities between the public offering price and the effective cash costs for shares acquired by insiders during the past year (Item 4: Dilution);
        - Plan of distribution for the offering and disclosure regarding selling securityholders (Item 5: Plan of Distribution and Selling Securityholders);
        - Use of proceeds (Item 6: Use of Proceeds to Issuer);
        - Business operations of the issuer for the prior three fiscal years (or, if in existence for less than three years, since inception) (Item 7: Description of Business);
        - Material physical properties (Item 8: Description of Property);
        - Discussion and analysis of the issuer's liquidity and capital resources and results of operations through the eyes of management covering the two most recently completed fiscal years and interim periods, if required; and, for issuers that have not received revenue from operations during each of the three fiscal years immediately before the filing of the offering statement (or since inception, whichever is shorter), the plan of operations for the 12 months following qualification of the offering statement, including a statement about whether the issuer anticipates that it will be necessary to raise additional funds within the next six months (Item 9: Management's Discussion and Analysis of Financial Condition and Results of Operations);

        - Identification of directors, executive officers and significant employees with a discussion of any family relationships within that group, business experience during the past five years, and involvement in certain legal proceedings during the past five years (Item 10: Directors, Executive Officers and Significant Employees);
        - Group-level executive compensation disclosure for the most recent fiscal year for the three highest paid executive officers or directors with Tier 2 requiring individual disclosure of the three highest paid executive officers or directors (Item 11: Compensation of Directors and Executive Officers);
        - Beneficial ownership of voting securities by executive officers, directors, and 10% owners (Item 12: Security Ownership of Management and Certain Securityholders);
        - Transactions with related persons, promoters and certain control persons (Item 13: Interest of Management and Others in Certain Transactions);
        - The material terms of the securities being offered (Item 14: Securities Being Offered); and
        - Any events that would have triggered disqualification of the offering under Rule 262 if the issuer could not rely on the provisions in Rule 262(b)(1).
        - The changes to the Offering Circular format adopted today will result in Offering Circular disclosure, particularly for Tier 2 offerings, more akin to what is required of smaller reporting companies in a prospectus for a registered offering.
            - For example, the final rules require issuers in both Tier 1 and Tier 2 offerings to disclose beneficial ownership of their voting securities, as opposed to record ownership of voting and nonvoting securities.
    - Related Party Transactions
        - <u>Tier II</u> - With respect to transactions with related persons, promoters, and certain control persons in Tier 2 offerings, issuers will no longer be required to disclose transactions in excess of $50,000 in the prior two years (or similar transactions currently contemplated), but rather must follow the requirements for smaller reporting company disclosure of transactions during the prior two fiscal years that exceed the lesser of $120,000 or 1% of the average total assets at year end for the last two completed fiscal years.
        - <u>Tier I</u> - We originally proposed to apply this threshold to Tier 1 offerings also, but believe that the 1% of average total assets threshold could result in a lower disclosure threshold for smaller issuers than was otherwise required of such issuers under the existing rules. The final rules therefore preserve the related party transaction disclosure requirements of Regulation A, as they existed before the adoption of final rules today, for Tier 1 offerings so that issuers in such offerings are only required to disclose such transactions in excess of $50,000 in the prior two years (or similar transactions currently contemplated)
    - Executive Compensation
        - The final rules alter the format of, but not the ultimate aggregate amount of information required to be disclosed in, the proposed executive compensation disclosure requirements for Tier 1 offerings.

    - Instead of providing executive compensation data on an individual basis for the three highest paid officers or directors and on a group basis for all directors, as was proposed for both Tier 1 and Tier 2, issuers in Tier 1 offerings will instead be required to disclose only group-level compensation data as it applies to the three highest paid executives or directors and all directors as a collective group, including the number of persons comprising such group, covering the period of the issuer's last completed fiscal year. In this regard, the final rules for Tier 1 offerings will continue to require the disclosure of important compensation data to investors, but on an aggregate, rather than individual, basis.
  - General
    - Except as noted above, the updates to the Offering Circular disclosure requirements will not result in an overall increase in an issuer's disclosure obligations. For example, as mentioned above, certain issuers will have a higher threshold for reporting related party transactions than would have previously been required under Regulation A. Additionally, Tier 1 issuers (which will likely be smaller companies) will, in comparison to the proposed rules, benefit from further scaling of related party transactions and compensation-related disclosures. Further, as proposed, all issuers will be permitted to provide more streamlined disclosure of dilutive transactions with insiders by no longer being required to present a dilution table based on the net tangible book value per share of the issuer's securities.
- Financial Statements
  - General
    - We proposed to generally maintain the existing financial statement requirements of current Part F/S of Form 1-A for Tier 1 offerings, while requiring Tier 2 issuers to file audited financial statements.
  - Tier 1
    - However, the final rules clarify that, if an issuer conducting a Tier 1 offering has already obtained an audit of its financial statements for other purposes, and that audit was performed in accordance with U.S. GAAS or the standards of the PCAOB, and the auditor followed the independence standards of either Rule 2-01 of Regulation S-X or the independence standards of the AICPA, then those audited financial statements must be filed.
  - Tier 2
    - Thus, requiring issuers in Tier 2 offerings to have their financial statements audited in accordance with PCAOB standards would have the effect of requiring issuers to comply with two sets of auditing standards and potentially result in audits for Tier 2 issuers being subject to additional incremental costs than would be required for registered offerings (which are only subject to PCAOB auditing standards). To avoid such a result, the final rules permit Tier 2 issuers the option of following U.S. GAAS or the standards of the PCAOB.
  - Canada
    - Additionally, however, we proposed to permit Canadian issuers to prepare financial statements in accordance with either U.S. GAAP or International

Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB).

- Balance Sheets
  - We proposed to require all issuers to file balance sheets as of the two most recently completed fiscal year ends (or for such shorter time that they have been in existence), instead of the current requirement to file a balance sheet as of only the most recently completed fiscal year end. As proposed, financial statements for U.S.-domiciled issuers would be required to be prepared in accordance with U.S. GAAP.
- Tier 1 vs. Tier 2
  - As proposed, issuers conducting Tier 1 offerings would be required to follow the requirements for the form and content of their financial statements set out in Part F/S, rather than the requirements in Regulation S-X.
  - For all Tier 2 offerings, the proposed rules would require issuers to follow the financial statement requirements of Article 8 of Regulation S-X, as if the issuer conducting a Tier 2 offering were a smaller reporting company, unless otherwise noted in Part F/S.
- Current-ness
  - We proposed to extend the permissible age of financial statements in Form 1-A to nine months, in order to permit the provision of financial statements that are updated on a timetable consistent with our proposed requirement for semiannual interim reporting.
  - We also proposed to add a new limitation on the age of financial statements at qualification, under which an offering statement could not be qualified if the date of the balance sheet included under Part F/S were more than nine months before the date of qualification.
- Accounting Standards
  - Additionally, consistent with the suggestions of commenters and in order to be consistent with the treatment of emerging growth companies under Section 102(b)(1) of the JOBS Act, the final rules permit issuers, where applicable, to delay the implementation of new accounting standards to the extent such standards provide for delayed implementation by non-public business entities.

- Exhibits
  - We proposed to maintain the existing exhibit requirements in Part III of Form 1-A. Additionally, we proposed to continue to permit issuers to incorporate by reference certain information in documents that is already available on EDGAR, but also require issuers to describe the information incorporated by reference and include a hyperlink to such exhibit on EDGAR.
  - As proposed, issuers also would have to be subject to the ongoing reporting obligations for Tier 2 offerings in order to avail themselves of this accommodation.

Ongoing Reporting

- Proposed Rule

- Regulation A currently requires issuers to file a Form 2-A with the Commission to report sales and the termination of sales made under Regulation A every six months after qualification and within 30 calendar days after the termination, completion, or final sale of securities in the offering. We proposed to rescind Form 2-A, but to continue to require Regulation A issuers to file with the Commission electronically on EDGAR after the termination or completion of the offering the information generally disclosed in Form 2-A.
- As proposed, issuers conducting Tier 1 offerings would be required to provide this information on Part I of proposed Form 1-Z not later than 30 calendar days after termination or completion of the offering, while issuers conducting Tier 2 offerings have the flexibility to provide this information on either Part I of Form 1-Z at the time of filing an exit report or proposed Form 1-K as part of their annual report, whichever is filed first.
- As proposed, Tier 2 issuers would be subject to a Regulation A ongoing reporting
- regime that would require, in addition to annual reports and summary information about a recently completed offering, semiannual reports on proposed Form 1-SA, current event reports on proposed Form 1-U, and, when eligible and electing to do so, notice to the Commission of the suspension of ongoing reporting obligations on Part II of proposed Form 1-Z. All of these reports would be filed electronically on EDGAR.

- Rules
  - Tier 1 & Tier 2 Reporting – End of Offering
    - Eliminate Form 2-A and replace it with Part 1 of Form 1-Z
      - (or Part 1 of Form 1-K for Tier 2 issuers, depending on when the offering is terminated or completed).
    - Part 1 of Form 1-Z
      - include the date the offering was qualified and commenced, the amount of securities qualified, the amount of securities sold in the offering, the price of the securities, the portions of the offering that were sold on behalf of the issuer and any selling securityholders, any fees associated with the offering, and the net proceeds to the issuer.
      - Issuers will only be required to disclose such information after the termination or completion of the offering.
  - Tier 1 Reporting
    - The final rules do not require any ongoing reporting for issuers conducting Tier 1 offerings, other than the disclosure of the summary information discussed above.
    - Commentary
      - We believe issuers in Tier 1 offerings will be small companies whose businesses revolve around products, services, and a customer base that will likely be more local in nature than issuers in Tier 2 offerings.
      - Further, we believe Tier 1 offerings will be conducted by issuers that are unlikely to seek the creation of a secondary trading market in their securities. In light of this, we do not believe that it is necessary to require ongoing reporting for Tier 1 issuers
  - Tier 2 Reporting

    - The final rules for ongoing reporting for Tier 2 issuers are being adopted as proposed, except where noted below, and will require issuers to file annual reports on Form 1-K, file semiannual reports on Form 1-SA, file current event reports on Form 1-U, and provide notice to the Commission of the suspension of their ongoing reporting obligations on Part II of Form 1-Z.
    - All reports for Tier 1 and Tier 2 offerings are required to be filed electronically on EDGAR.
- Annual Report – Form 1-K
  - General
    - Form 1-K must be filed within 120 calendar days after the issuer's fiscal year end.
    - A manually signed copy of the Form 1-K must be executed by the issuer and related signatories before or at the time of filing and retained by the issuer for a period of five years. Issuers will be required to produce the manually signed copy to the Commission, upon request.
  - Part 1 (Notification)
    - As adopted, Part I of Form 1-K will be an online XML-based fillable form that will include certain basic information about the issuer, prepopulated on the basis of information previously disclosed in Part I of Form 1-A, which can be updated by the issuer at the time of filing. Additionally, if at the time of filing the Form 1-K an issuer has terminated or completed a qualified Regulation A offering, the issuer will be required to provide certain updated summary information about itself and such offering in Part I, including the date the offering was qualified and commenced, the amount of securities qualified, the amount of securities sold in the offering, the price of the securities, the portions of the offering that were sold on behalf of the issuer and any selling securityholders, any fees associated with the offering, and the net proceeds to the issuer.
    - As proposed and adopted, issuers will only be required to fill out the XML-based portion of Part I of Form 1-K that relates to the summary information about a terminated or completed offering once per offering. An issuer that elects to terminate its ongoing reporting obligation under Tier 2 of Regulation A after terminating or completing an offering, in a fiscal year other than the fiscal year in which the offering statement was qualified, but before reporting the required summary information on Form 1-K, will be required to file the summary offering information in Part I of Form 1-K by filing a Form 1-Z (exit report) that includes such information.
  - Part 2 (Information to be included in the report)
    - Part II will require issuers to disclose information about themselves and their business based on the financial statement and narrative disclosure requirements of Form 1-A.
  - Form 1-K will cover:
    - Business operations of the issuer for the prior three fiscal years (or, if in existence for less than three years, since inception);
    - Transactions with related persons, promoters, and certain control persons;

        - Beneficial ownership of voting securities by executive officers, directors, and 10% owners;
        - Identities of directors, executive officers, and significant employees, with a description of their business experience and involvement in certain legal proceedings;
        - Executive compensation data for the most recent fiscal year for the three highest paid executive officers or directors;
        - MD&A of the issuer's liquidity, capital resources, and results of operations covering the two most recently completed fiscal years; and
        - Two years of audited financial statements.
- Semiannual Report – Form 1-SA
    - Rule
        - Issuers will be required to provide semiannual reports on Form 1-SA that, much like reports on Form 10-Q, consist primarily of financial statements and MD&A.
        - Unlike Form 10-Q, however, Form 1-SA does not require disclosure about quantitative and qualitative market risk, controls and procedures, updates to risk factors, or defaults on senior securities.
        - Commission has attempted to streamline and harmonize disclosure to make the requirements for Tier 2 issuers no more onerous than, and consistent with, the ongoing disclosures required of smaller reporting companies under the Exchange Act.
    - General
        - Form 1-SA must be filed within 90 calendar days after the end of the first six months of the issuer's fiscal year. The first such obligation to file will commence immediately following the most recent fiscal year for which full financial statements were included in the offering statement, or, if the offering statement included financial statements for the first six months of the fiscal year following the most recent full fiscal year, for the first six months of the following fiscal year. As proposed, a manually signed copy of the Form 1-SA must be executed by the issuer and related signatories before or at the time of filing, retained by the issuer for a period of five years, and produced by the issuer to the Commission, upon request.
- Current Reports – Form 1-U
    - The final rules require issuers to submit a report on Form 1-U when it experiences one (or more) of the following events:
        - Fundamental changes;
            - (Note: an acquisition transaction will only result in a fundamental change for these purposes if the purchase price, as defined by U.S. GAAP and IFRS, exceeds 50% of the total consolidated assets of the issuer as of the end of the most recently completed fiscal year)
        - Bankruptcy or receivership;
        - Material modification to the rights of securityholders;
        - Changes in the issuer's certifying accountant;

        - Non-reliance on previous financial statements or a related audit report or completed interim review;
        - Changes in control of the issuer;
        - Departure of the principal executive officer, principal financial officer, or principal accounting officer; and
        - Unregistered sales of 10% or more of outstanding equity securities.
    - General
        - As adopted, Form 1-U must be filed within four business days after the occurrence of any of the triggering events, and, where applicable, will permit issuers to incorporate by reference certain information previously filed on EDGAR.
        - A manually signed copy of the Form 1-U must be executed by the issuer and related signatories before or at the time of filing and retained by the issuer for a period of five years. Issuers are required to produce the manually signed copy to the Commission, upon request.
- Exit Report – Form 1-Z
    - Timing
        - Issuers conducting Tier 1 offerings would be required to provide this information on Form 1-Z not later 30 calendar days after termination or completion of the offering, while issuers conducting Tier 2 offerings would be required to provide this information on Form 1-Z at the time of filing the exit report, if not previously provided on Form 1-K as part of their annual report.
    - Content
        - As proposed, the summary offering information disclosed on Form 1-Z would be publicly available on EDGAR (but not otherwise required to be distributed to investors) and would include the date the offering was qualified and commenced, the number of securities qualified, the number of securities sold in the offering, the price of the securities, any fees associated with the offering, and the net proceeds to the issuer.
    - Tier 2 – Suspension of Ongoing Reporting
        - We further proposed to permit a Tier 2 issuer that has filed all ongoing reports required by Regulation A for the shorter of (1) the period since the issuer became subject to such reporting obligation or (2) its most recent three fiscal years and the portion of the current year preceding the date of filing Form 1-Z to immediately suspend its ongoing reporting obligation under Regulation A at any time after completing reporting for the fiscal year in which the offering statement was qualified, if the securities of each class to which the offering statement relates are held of record by fewer than 300 persons and offers or sales made in reliance on a qualified offering statement are not ongoing.
        - In such circumstances, an issuer's obligation to continue to file ongoing reports in a Tier 2 offering under Regulation A would be suspended immediately upon the filing of a notice with the Commission on Part II of proposed Form 1-Z. A manually signed copy of the Form 1-Z would have to be executed by the issuer and related signatories before or at the time of filing and retained by the issuer

for a period of five years. Issuers would be required to produce the manually signed copy to the Commission, upon request.

- Exception
  - In a change from the proposal, in order to be consistent with Title VI of the JOBS Act, the final rules permit banks or bank holding companies to immediately suspend their ongoing reporting obligation under Regulation A at any time after completing reporting for the fiscal year in which the offering statement was qualified, if the securities of each class to which the offering statement relates are held of record by fewer than 1,200 persons, instead of 300 persons, and offers or sales made in reliance on a qualified Tier 2 offering statement are not ongoing.

- Special Financial Reports on Form 1-K and Form 1-SA
  - Where applicable, issuers conducting Tier 2 offerings must provide special financial reports analogous to those required under Exchange Act Rule 15d-2. The special financial report requires audited financial statements for the issuer's most recent fiscal year (or for the life of the issuer if less than a full fiscal year) to be filed not later than 120 calendar days after qualification of the offering statement if the offering statement does not include such financial statements.
  - The special financial report requires semiannual financial statements for the first six months of the issuer's fiscal year, which may be unaudited, to be filed 90 calendar days after qualification of the offering statement if the offering statement does not include such financial statements and the offering statement was qualified in the second half of the issuer's current fiscal year.
  - The special financial report must be filed under cover of Form 1-K if it includes audited year end financial statements and under cover of Form 1-SA if it includes semiannual financial statements for the first six months of the issuer's fiscal year.
- Successor Issuers
  - Where in connection with a succession by merger, consolidation, exchange of securities, acquisition of assets, or otherwise, securities of an issuer that is not subject to the reporting requirements of Regulation A are issued to the holders of any class of securities of an issuer that is subject to ongoing reporting under Tier 2, the issuer succeeding to that class of securities must continue to file the reports required for Tier 2 offerings on the same basis as would have been required of the original Tier 2 issuer.
- Broker-Dealers
  - General Quotation Rule
    - Exchange Act Rule 15c2-11 governs broker-dealers' publication of quotations for securities in a quotation medium other than a national securities exchange.
    - The Commission adopted Rule 15c2-11 in 1971 to prevent fraudulent and manipulative trading schemes that had arisen in connection with the distribution and trading of certain unregistered securities.
    - The rule prohibits broker-dealers from publishing quotations (or submitting quotations for publication) in a "quotation medium" for covered over-the-counter securities without first reviewing basic information about the issuer, subject to certain exceptions.

- Rule
  - We are adopting final rules for Regulation A that, as proposed, amend Exchange Act Rule 15c2-11(a) so that an issuer's ongoing reports filed under Tier 2 will satisfy the specified information about an issuer and its security that a broker-dealer must review before publishing a quotation for a security (or submitting a quotation for publication) in a quotation medium.
- Rule 144 and 144A
  - We are not following the suggestions of some commenters that we adopt provisions in the final rules so that Tier 2 ongoing reports will satisfy the current information requirements of Rule 144 and Rule 144A for the entirety of an issuer's fiscal year.
  - Quarterly reporting is an integral part of the resale safe harbors provided for in Rule 144 and Rule 144A that contemplate the provision of ongoing and continuous information.
  - While the semiannual reporting required under the final rules for Tier 2 offerings will result in issuers only having "reasonably current information" and "adequate current public information" for the portions of the year during which the financial statements of such issuers continue to satisfy the respective rules, we note that issuers may voluntarily submit on Form 1-U quarterly financial statements or other information necessary to satisfy the respective rule requirements.
  - In such instances, and provided that the financial statements otherwise meet the financial statement requirements of Form 1-SA, such voluntarily provided quarterly information could satisfy the "reasonably current information" and "adequate current public information" requirements of Rule 144 and Rule 144A. An issuer that is therefore current in its semiannual reporting required under the rules and voluntarily provides quarterly financial statements on Form 1-U will have provided reasonably current and adequate current public information for the entirety of such year under Rule 144 and Rule 144A.

- Exchange Act Registration
  - General
    - Under Section 15(d) of the Exchange Act, an issuer that has had a Securities Act registration statement declared effective must comply with the periodic reporting requirements of the Exchange Act. Qualification of a Regulation A offering statement does not have the same effect. An issuer of Regulation A securities would not take on Exchange Act reporting obligations unless it separately registered a class of securities under Section 12 of the Exchange Act, or conducted a registered public offering.
    - As proposed, issuers conducting offerings under Regulation A that seek to list their securities on a national securities exchange or otherwise register a class of securities under the Exchange Act would be required to file a registration statement on Form 10.
    - We solicited comment, however, on whether we should provide a simplified means for Regulation A issuers to register a class of securities under the Exchange Act, for example, by permitting such issuers to file a Form 8-A rather

than a Form 10 in conjunction with, or following, the qualification of a Regulation A offering statement on Form 1-A.

- Rule
  - In the final rules, and consistent with the views of many commenters,717 we are simplifying Exchange Act registration in connection with Regulation A offerings conducted pursuant to Tier 2 so that issuers wishing to register a class of Regulation A securities under the Exchange Act may do so by filing a Form 8-A in conjunction with the qualification of a Form 1-A. Only issuers that follow Part I of Form S-1 or the Form S-11 disclosure model in the offering circular will be permitted to use Form 8-A.
  - An issuer registering a class of securities under the Exchange Act concurrently with the qualification of a Regulation A offering statement will become an Exchange Act reporting company upon effectiveness of the Form 8-A and, if applicable, its obligation to file ongoing reports under Regulation A will be suspended for the duration of the resulting reporting obligation under Section 13 of the Exchange Act.
  - We recognize that Exchange Act reporting requires more comprehensive ongoing reporting than the Regulation A disclosure regime, which is why facilitating issuers' entrance into the Exchange Act reporting system on Form 8-A concurrent with the qualification of a Regulation A offering statement will benefit investors.
  - Consistent with the suggestion of commenters,725 we agree that issuers entering Exchange Act reporting under a qualified Regulation A offering statement and Form 8-A will be considered "emerging growth companies" to the extent the issuers otherwise qualify for such status. Issuers should base status determinations on the definition of an emerging growth company as it appears in the Securities Act and the Exchange Act.

- **Insignificant Deviations**
  - Rule
    - We did not propose any changes to the existing insignificant deviation provisions of Rule 260. Rule 260 provides that certain insignificant deviations from a term, condition or requirement of Regulation A will not result in the issuer's loss of the exemption from registration under Section 5 of the Securities Act.
  - Safe Harbor
    - If person relying on the exemption establishes that:
      - (1) The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity;
      - (2) The failure to comply was insignificant with respect to the offering as a whole, provided that any failure to comply with the offering limitations, issuer eligibility criteria, or requirements for offers or continuous or delayed offerings will be deemed to be significant to the offering as a whole; and

            - (3) A good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of Regulation A.
    - No Safe Harbor Permitted
        - The provisions of Regulation A regarding issuer eligibility, offering limits, offers, and continuous or delayed offerings of Regulation A are deemed to be significant to the offering as a whole, and any deviations from these provisions result in the issuer's loss of the exemption.

- **Bad Actor Disqualification**
    - We are adopting bad actor disqualification provisions for Regulation A, substantially as proposed with the exception of one change to further align the final rules for Regulation A with similar provisions in Rule 506(d). The covered persons and triggering events in the final rules for Regulation A are substantially the same as the covered persons and triggering events included in Rule 506(d).
    - The covered persons include managing members of limited liability companies; compensated solicitors of investors; underwriters; executive officers and other officers participating in the offering; and beneficial owners of 20% or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power.
        - We believe that it is appropriate to refine our initial interpretation, as it applies to our bad actor disqualification rules, and create a "bright-line" standard that is consistent with the definition of the term "voting securities" in Rule 405 of the Securities Act. In this regard, we believe that such a term should include only those voting equity securities which, by their terms, currently entitle the holder to vote for the election of directors. In other words, we believe the term should be read to denote securities having a right to vote that are presently exercisable.
    - Consistent with the bad actor disqualification rules under Rule 506(d), the final rules also include two new disqualification triggers not previously present in Regulation A: (1) final orders and bars of certain state and other federal regulators, and (2) Commission cease-and-desist orders relating to violations of scienter-based anti-fraud provisions of the federal securities laws or Section 5 of the Securities Act.
        - In order to clarify the scope of the term "final order" as it appears in Rule 262, we are including a definition of that term in Regulation A that is consistent with the term as it appears in Rule 501(g) of Regulation D. As adopted, a "final order" shall mean a written directive or declaratory statement issued by a federal or state agency described in Rule 262(a)(3) under applicable statutory authority that provides for notice and an opportunity for hearing, which constitutes a final disposition or action by that federal or state agency.
        - The final disqualification rules in Regulation A also specify that an order must bar the covered person at the time of filing of the offering statement, as opposed to the requirement in Rule 506(d) that the order must bar the covered person at the time of the relevant sale. This clarification accords with the current provisions of Rule 262 and is appropriate for Regulation A because there is no filing requirement before the time of first sale in Rule 506

- **Relationship with State Securities Law**
  - Background
    - Although Section 401(b) of the JOBS Act does not exempt offerings made under Section 3(b)(2) and the related rules from state law registration and qualification requirements, it added Section 18(b)(4)(D) to the Securities Act.
    - That provision states that Section 3(b)(2) securities are covered securities for purposes of Section 18 if they are "offered or sold on a national securities exchange" or "offered or sold to a qualified purchaser, as defined by the Commission pursuant to [Section 18(b)(3)] with respect to that purchase or sale."
    - Section 18(b)(3) provides that "the Commission may define the term 'qualified purchaser' differently with respect to different categories of securities, consistent with the public interest and the protection of investors."
  - Rule
    - In the final rules, a "qualified purchaser" for purposes of Section 18(b)(4)(D)(ii) of the Securities Act includes any person to whom securities are offered or sold in a Tier 2 offering. Because of the requirements for all Tier 2 offerings, all purchasers in Tier 2 offerings persons must be either accredited investors or persons who limit their investment amount to no more than 10% of the greater of annual income or net worth (for natural persons), or 10% of the greater of annual revenue or net assets at fiscal year end (for non-natural persons).
  - Legal Authority
    - By its terms, Section 18(b)(3) provides the Commission with the express authority to adopt rules that define a "qualified purchaser." The provision does not prescribe specific criteria that the Commission must consider in determining, or the manner in which it must determine, a purchaser to be "qualified." Furthermore, Section 18(b)(3) states that the definition of qualified purchaser may be different for different categories of securities. This means that, rather than considering the characteristics of the purchaser in isolation, the Commission may adopt a qualified purchaser definition that is also tailored to reflect the characteristics of the particular type of issuer or transaction. Further, Section 18(b)(3) does not proscribe any particular terms or characteristics that the Commission must include in any rules defining qualified purchaser with respect to a given category of securities. What it does instead is require that any rules so adopted be consistent with the public interest and the protection of investors.
  - Effect of Preemption
    - While covered security status under Section 18 prohibits the states from requiring the registration or qualification of such securities, Section 18(c) preserves the power of the states in several important areas.
    - Under Section 18(c), the states retain:
      - the jurisdiction to investigate and bring enforcement actions with respect to fraudulent securities transactions and unlawful conduct by broker-dealers;
      - the ability to require issuers to file with the states any document filed with the Commission, solely for notice purposes and the assessment of

fees, together with a consent to service of process and any required fee; and
            - the power to enforce the filing and fee requirements by suspending the offer or sale of securities within a given state for the failure to file or pay the appropriate fee.
    - Justification for Tier 2 Exception
        - Tier 2 - For example, the financial statements that Tier 2 issuers include in their offering circulars are required to be audited, and Tier 2 issuers must file audited financial statements with the Commission annually. Tier 2 issuers also must provide ongoing reports on an annual and semiannual basis with additional requirements for interim current event updates, assuring a continuous flow of information to investors and the market. In addition, purchasers in Tier 2 offerings must be either accredited investors or subject to limitations in the amount they may invest in a single offering. Finally, as with Tier 1 offerings, Tier 2 offering statements will be filed electronically, reviewed and qualified by Commission staff, and the offerings are subject to both limitations on eligible issuers and "bad actor" disqualification provisions. In consideration of these requirements, as well as our view, as discussed in greater detail below, that Tier 2 offerings are more likely to be national rather than local in nature, we believe that preemption of state securities law registration and qualification requirements is appropriate for purchasers in these offerings.
        - Tier 1 - Tier 1 issuers are not required to include audited financial statements in their offering statements, nor are they required—as contemplated by Section 3(b)(2)—to file audited financial statements with the Commission annually. They are further not subject to any ongoing reporting, beyond the requirements contained in Part I of Form 1-Z. While the final rules raise the offering limitation in Tier 1 to $20 million in a 12-month period, which we believe should increase the general utility of the tier, such offerings by virtue of the lower dollar amounts that can be raised in comparison to Tier 2 offerings, as well as the form filing requirements and the lack of ongoing reporting, will likely be conducted by a different set of issuers than those that conduct offerings pursuant to Tier 2. Specifically, we think that issuers conducting Tier 1 offerings are likely to be smaller companies whose businesses revolve around products, services, and a customer base that will more likely be located within a single state, region, or a small number of geographically dispersed states. We believe that these issuers will typically not seek or, on the basis of their business models, be able to: (i) raise capital on a national scale; or (ii) create a secondary trading market in their Regulation A securities.

- **Specific Changes Benefiting Small Issuances**
    - Commentary
        - We are adopting certain changes in the final rules that are intended to make Tier 1 more useful for small business capital formation. As discussed above, in line with the suggestions of commenters, we have raised the offering limitation in

Tier 1 to $20 million in a 12-month period, including no more than $6 million on behalf of selling securityholders that are affiliates of the issuer.\

- With respect to the offering circular narrative disclosure requirements,851 we have adopted certain additional scaled disclosure requirements for Tier 1 that are intended to lessen the compliance obligations for issuers. For example, Tier 1 issuers will be required to disclose related party transactions at the thresholds in current Regulation A, as opposed to the lower thresholds in the proposed rules, and simplified executive compensation data. We are further providing issuers under both Tiers with the accommodation provided to emerging growth companies in Securities Act Section 7(a) to delay the implementation of new accounting standards to the extent such standards provide for delayed implementation by non-public business entities.
- Lastly, we have provided Tier 1 issuers with additional flexibility with respect to auditor independence standards. As originally proposed, an issuer electing to provide audited financial statements in a Tier 1 offering—even though audited financial statements would not generally be required—would have had to engage the services of an auditor that followed the independence standards outlined in Article 2 of Regulation S-X.
- Commenters suggested that we should permit auditors of the financial statements of Tier 1 issuers to alternatively follow the independence standards of the AICPA or Article 2 of Regulation S-X. In the view of these comments, allowing auditors of Tier 1 issuer financial statements the option to follow the independence standards of the AICPA would permit more issuers to include financial statements that would be deemed audited under the requirements for Tier 1 in the first instance, thereby avoiding any fees associated with an issuer having their existing financial statements audited a second time under PCAOB standards. As noted above, we agree with commenters that this accommodation may benefit smaller issuers in Tier 1 offerings who wish to file audited final statements for purposes of the offering statement and thus are adopting this suggestion.

Economic Analysis

- Reg A Offerings
  - In calendar years 2012 to 2014, 26 Regulation A offerings, excluding amendments, were qualified by the Commission.
  - From 2002 through 2011, Regulation A filings took an average of 228 days to qualify. Average time to qualification exceeded 300 days in 2012-2014.
  - In 2014, we identified 11,228 Regulation D offerings that would have been potentially eligible to be conducted under amended Regulation A. Of those, 10,671 offerings relied on Rule 506, 376 on Rule 504, and 181 on Rule 505.
- IPO Costs
  - Two surveys cited in the IPO Task Force report concluded that regulatory compliance costs of IPOs average $2.5 million initially, followed by an average ongoing cost of $1.5 million per year.

- Factors Affecting Popularity
    - In its July 2012 report on Regulation A, the GAO cited four factors affecting the use of Regulation A offerings:
        - (1) costs associated with compliance with state securities regulations, or blue sky laws;
        - (2) the availability of alternative offering methods exempt from registration, such as Regulation D offerings;
        - (3) costs associated with the Commission's filing and qualification process; and
        - (4) the type of investors businesses sought to attract.
- Reporting Costs
    - General
        - Although reporting obligations for Tier 2 issuers are less extensive than for reporting companies, we recognize that they will still result in a significant direct cost of compliance. One commenter estimated the qualification and reporting costs of a Tier 2 issuer to be approximately $400,000 in the first year and $200,000 annually thereafter (per issuer).
        - For the purposes of the PRA, we estimate that compliance with the requirements of Forms 1-K, 1-SA, and 1-U for issuers with an ongoing reporting obligation under Regulation A will result in an aggregate annual burden of 115,351 hours of in-house personnel time and an aggregate annual cost of $13,450,272 for the services of outside professionals
    - Form 1-A
        - Currently, Regulation A requires issuers to file a Form 1-A: Offering Statement and a Form 2-A: Report of Sales and Uses of Proceeds with the Commission.
            - Form 1-A is estimated to take approximately 608 hours to prepare and Form 2-A is estimated to take approximately 12 hours to prepare.
        - Form 1-A requires disclosure similar to that required in a Form S-1 registration statement for registered offerings under the Securities Act, but with fewer disclosure items (e.g., it requires less disclosure about the compensation of officers and directors, and less detailed management discussion and analysis of the issuer's liquidity and capital resources and results of operations) and, under certain circumstances, Form 1-A does not require issuers to file audited financial statements.
            - We believe that the burden hours associated with amended Form 1 A will be greater than the current estimated 608 burden hours per response but will not be as great as the current estimated 972.32 burden hours per response for Form S-1. We therefore estimate that the total burden to prepare and file Form 1-A, as adopted today, including any amendments to the form, will increase on average across all issuers in comparison to existing Form 1-A to approximately 750 hours.
            - We estimate that the issuer will internally carry 75 percent of the burden of preparation and that outside professionals retained by the issuer at an average cost of $400 per hour will carry 25 percent.

- Form 1-K
  - We believe the compliance burden associated with disclosure provided in Form 1-K will be less than the compliance burden associated with reporting required under Exchange Act Sections 13 or 15(d). We also believe the burden is more analogous to the compliance burden attendant to Form 1-A. Unlike the disclosure required in Form 1-A, however, offering-specific disclosure in Form 1-K is not required. Additionally, under certain circumstances, an issuer will be required to disclose information similar to the information previously required of issuers on Form 2-A.
  - Unlike the disclosure previously required on Form 2-A, however, an issuer is not required to provide disclosure about the use of proceeds. We estimate that the burden to prepare and file a Form 1-K will be less than that required to prepare and file a Form 1-A. We estimate that compliance with Form 1-K will result in a burden of 600 hours per response.
  - We further estimate that 75 percent of the burden of preparation will be carried by the issuer internally and that 25 percent will be carried by outside professionals retained by the issuer at an average cost of $400 per hour.
- Form 1-SA:
  - Issuers must provide semiannual updates on Form 1-SA, which, like a Form 10-Q, consists primarily of financial statements and MD&A. Unlike Form 10-Q, Form 1-SA does not require disclosure regarding quantitative and qualitative market risk or controls and procedures.
  - We estimate, however, that on balance the reduction in burden attributable to eliminating these two items in Form 1-SA will be offset by the increased burden associated with requiring financial statement disclosure covering six months, rather than three months. We therefore believe the per response compliance burden of Form 1-SA will be similar to the compliance burden for issuers filing a Form 10-Q under the Exchange Act.
  - Therefore, for purposes of this PRA analysis, we estimate that the burden to prepare and file a Form 1-SA will equal the burden to prepare and file Form 10-Q, which we have previously estimated as 187.43 hours per response.
  - Unlike Form 1-K, Form 1-SA does not require the provision of audited financial statements. We therefore believe, in comparison to Form 1-K, issuers filing a Form 1-SA will be able to prepare more of the required disclosures internally. Accordingly, we estimate that 85 percent of the burden of preparation will be carried by the issuer internally and that 15 percent will be carried by outside professionals retained by the issuer at an average cost of $400 per hour
- Form 1-U:
  - The requirement to file a Form 1-U, however, will be triggered by significantly fewer corporate events than those that trigger a reporting requirement on a Form 8-K, and the form itself will be slightly less burdensome for issuers to fill out.
  - Thus, the frequency of filing the required disclosure and the burden to prepare and file a Form 1-U will be considerably less than for Form 8-K. We estimate that the burden to prepare and file each current report will be 5 hours.

- Form 1-Z:
  - The Form 1-Z is similar to the Form 15 that issuers file to provide notice of termination of the registration of a class of securities under Exchange Act Section 12(g) or to provide notice of the suspension of the duty to file reports required by Exchange Act Sections 13(a) or 15(d).
  - Therefore, we estimate that compliance with the Form 1-Z will result in a similar burden as compliance with Form 15 that is, a burden of 1.50 hours per response. We estimate that 100% of the burden will be carried by the issuer internally.