

SEC's (Securities and Exchange Commission) Proposed Rules on "Regulation A-Plus" Indicate a Streamlined Vehicle for Raising up to \$50 Million in Capital

Article By:

Matt Kitzi

Proposed federal rules released on December 18 may have the effect of making it quicker, less expensive and more worthwhile for businesses to **raise up to \$50 million in capital** under a once-obscure and seldom-used registration exemption. When the proposed rules take effect, companies will be able to raise money by selling securities that can be generally advertised and sold to the general public without concern for traditional investor "sophistication" requirements or the customary delays and costs related to full federal and state registration.

The rules, which were proposed by the U.S. Securities and Exchange Commission, apply to Title IV of the 2012 Jumpstart Our Business Startups Act, better known as "Regulation A-Plus." For years, the Regulation A exemption has allowed businesses to raise capital without need for full federal registration, but capped such efforts at \$5 million and still required often-laborious state registration. The JOBS Act was intended to provide lower cost, practical methods for raising capital. While other parts of the 2012 law, such as equity crowdfunding, have various snags that may make them less attractive, Reg A Plus could prove a worthwhile alternative. Key features of a capital raising effort under this new exemption would include:

- Cap increases on such offerings to \$50 million over a 12-month period
- Offers that can be made and generally advertised to the public
- Stock that can be resold without restriction
- Relief from determining an investor's "accredited" status or other sophistication measure
- "Test the waters" opportunities to determine market conditions and interest
- A "lighter" registration process with federal regulators
- Preemption of state regulation for offers of more than \$5 million, removing the state registration issue entirely

While the proposed rules do contemplate a method for **avoiding state regulators altogether**, the SEC has specifically asked whether a streamlined registration approach recently proposed by the states might be workable for issuers. Though the \$5 million-plus tier would eliminate the state registration issue, it would also require audited financial statements and periodic reporting, and limit the amount of securities each investor may purchase (up to 10 percent of the greater of an investor's net worth or income).

The proposed rules are now subject to a 60-day public comment period, and then must be adopted as "final" by the Commission and later published in the Federal Register.

The enhanced Regulation A exemption could be available as early as mid-2014, and Armstrong Teasdale's experienced securities attorneys can provide advice to businesses positioning themselves now for a capital raising effort under these new rules, **including assistance with drafting a comment letter to the SEC.**

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