

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 230, 232, 239, 240 AND 260**

**[Release Nos. 33-9497; 34-71120; 39-2493; File No. S7-11-13]**

**RIN 3235-AL39**

**Proposed Rule Amendments for Small and Additional Issues Exemptions Under  
Section 3(b) of the Securities Act**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rules.

**SUMMARY:** We are proposing rule amendments to Regulation A to implement Section 401 of the Jumpstart Our Business Startups Act. Section 401 of the JOBS Act added Section 3(b)(2) to the Securities Act, which directs the Commission to adopt rules exempting offerings of up to \$50 million of securities annually from the registration requirements of the Securities Act. The proposed rules include issuer eligibility requirements, content and filing requirements for offering statements and ongoing reporting requirements for issuers.

**DATES:** Comments should be received by March 24, 2013.

**ADDRESSES:** Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment forms  
<http://www.sec.gov/rules/proposed.shtml>;
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-11-13 on the subject line; or

# Summary of Comments on Proposed Rule Amendments for Small and Additional Issues Exemptions Under Section 3(b) of the Securities Act

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Page: 1

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 Number: 1 Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC Subject: Tuesday, March 25th, 2014  
Date: 3/23/2014 12:29:07 PM

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**Dear SEC Folks:**

**Good afternoon and thank you for giving me this opportunity to comment on this Re-Proposal....(gentle aside, a title of a document should in some way, shape or manner indicate what the subject contents is about....**

**this title is nice and meaningless....**

**rather this Re-Proposal is about loosening the requirements and regulations for raising capital....**

**via asset values, either real or imagined....**

**period....**

**In closing, our best wishes for a task that is critical to the protection of our market system, (aka: playing fair.....).....Respectfully yours,  
Pw Carey, Senior IT Auditor (GRC), CISA, CISSP.....**

**Our comments are ours and our's alone....**

**Monday, March 24th, 2014**



## I. INTRODUCTION AND BACKGROUND

### A. JOBS Act Section 401

This rulemaking would implement a statutory directive under the Jumpstart Our Business Startups Act (the “JOBS Act”)<sup>15</sup> to create a new exemption from registration under the Securities Act of 1933 (the “Securities Act”) for small offerings. Section 401 of the JOBS Act amended Section 3(b) of the Securities Act by designating existing Section 3(b), the Commission’s exemptive authority for offerings of up to \$5 million, as Section 3(b)(1), and creating a new Section 3(b)(2). New Section 3(b)(2) directs the Commission to adopt rules adding a class of securities exempt from the registration requirements of the Securities Act for offerings of up to \$50 million of securities within a twelve-month period. Issuers conducting offerings in reliance on Section 3(b)(2) would be required to follow terms and conditions established by the Commission, and, where applicable, to make ongoing disclosure.

Congress enacted Section 3(b)(2) against a background of public commentary suggesting that Regulation A, an exemption for small issues originally adopted by the Commission in 1936 under the authority of Section 3(b) of the Securities Act,<sup>16</sup> should be expanded and updated to make it more useful to small companies.<sup>17</sup> Section 3(b)(2)

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<sup>15</sup> Pub. L. No. 112-106, 126 Stat. 306.

<sup>16</sup> SEC Release No. 33-632 (Jan. 21, 1936). Prior to codification as such, Regulation A was a collection of individual rules issued by the Federal Trade Commission and the Commission during the period of 1933-1936. Each such rule exempted particular classes of securities from registration under the Securities Act. Regulation A’s initial annual offering limit was raised from \$100,000 to \$300,000 in 1945, \$500,000 in 1970, \$1.5 million in 1978, and to its current level of \$5 million in 1992.

<sup>17</sup> H.R. Rep. No. 112-206 (2011), at 3-4. *See also* Remarks and prepared statements of William Hambrecht, CEO of WR Hambrecht + Co., (“A confluence of . . . reasons . . . has made Regulation A a poor alternative for small growth-oriented companies seeking to raise development capital and also explains why the offering mechanism has virtually disappeared from the capital raising landscape.”), and Michael Lempres, Asst. General Counsel, SVB Financial Group,

Number: 1 Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC Subject: Tuesday, March 25th, 2014  
Date: 3/24/2014 1:33:25 PM

**Dear SEC Folks: We believe the following to be a fair and honest statement regarding the duties, responsibilities and obligations of your organization:**

**"SEC's Mission Statement as of March 23rd, 2014 EDT**

**The Investor's Advocate: How the SEC Protects Investors, Maintains Market Integrity, and Facilitates Capital Formation..." .....**

**The above Charter does not agree with your appointed head...via the following....:**

**"In my view, given the explicit language of the JOBS Act as well as the statutory deadline that passed last July, the Commission should act without any further delay. This does not mean, however, that the Commission should not take steps to pursue additional investor safeguards if and where such measures become necessary once the ban on general solicitation is lifted." .....**

**Please Note: You can't have it both ways..... do it correctly or do it quickly...and just get it done.....cause we all got a mandate to expedite this gaul darn economy regardless of the quality and/or efficacy of our solutions...and in this case based upon a couple of years of freedom to act....you all are swimming without your water-wings....(aka: your proposing a series of unfortunate decisions.... (aka: solutions).....in search of a problem...)....which this fraud swamp won't fix.....**

**By the way, have you all run this by the PCAOB.....? Guess not.**

**Respectfully yours,**

**Pw Carey  
Senior IT Auditor, (GRC), CISA, CISSP**

provisions of Section 11 of the Securities Act.<sup>31</sup> Instead, other anti-fraud and civil liability provisions of the securities laws, including Sections 12(a)(2) and 17 of the Securities Act, Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5, apply to the offer and sale of securities in reliance upon Regulation A.<sup>32</sup> Securities offerings conducted pursuant to Regulation A are subject to state securities law registration and qualification requirements, unless an exemption is available under state law.

### C. Use of Regulation A

In recent years, Regulation A offerings have been rare in comparison to offerings conducted in reliance on other Securities Act exemptions or on a registered basis. From 2009 through 2012, there were 19 qualified Regulation A offerings for a total offering amount of approximately \$73 million.<sup>33</sup> During the same period, there were approximately 27,500 offerings of up to \$5 million (*i.e.*, at or below the cap on Regulation A offering size), for a total offering amount of approximately \$25 billion, claiming a Regulation D exemption, and 373 offerings of up to \$5 million, for a total offering amount of approximately \$840 million, conducted on a registered basis. In 2012 alone, there were eight qualified Regulation A offerings for a total offering amount of approximately \$34.5 million, compared to approximately 7,700 Regulation D offerings of up to \$5 million for a total offering amount of approximately \$7 billion, and 52 registered offerings of up to \$5 million for a total offering amount of approximately \$132 million.<sup>34</sup>

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<sup>32</sup> See SEC Rel. No. 33-6924 (March 20, 1992) [57 FR 9768], at fn. 57 (discussing the anti-fraud and civil liability provisions applicable to Regulation A).

<sup>33</sup> One qualified offering involved a dividend reinvestment plan by an issuer that did not include an offering amount.

<sup>34</sup> The figures cited above are derived from information contained in the Commission's EDGAR database and the S&P Capital IQ database. See also Section IV. below for a discussion on the usage of current methods of raising capital of up to \$50 million.



informing potential investors where and how the most current preliminary offering circular can be obtained. This requirement could be satisfied by providing the uniform resource locator (“URL”) where the preliminary offering circular or the offering statement may be obtained on EDGAR.

*Qualification, communications, and offering process:*

- Require issuers and intermediaries in the prequalification period to deliver a preliminary offering circular to prospective purchasers at least 48 hours in advance of sale.
- Modernize the qualification, communications, and offering process in Regulation A to reflect analogous provisions of the Securities Act registration process:<sup>45</sup>
  - Permit issuers and intermediaries to satisfy their delivery requirements as to the final offering circular under an “access equals delivery” model when the final offering circular is filed and available on EDGAR;
  - Require issuers that sell to prospective purchasers in reliance on the delivery of a preliminary offering circular to, not later than two business days after completion of the sale, provide the purchasers with a copy of the final offering circular or a notice that the sale occurred pursuant to a qualified offering statement that includes the URL where the final offering circular or to the offering statement of which such final offering circular is part may be obtained and contact information sufficient to notify a purchaser where a request for a final offering circular can be sent and received in response; and

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<sup>45</sup> See Securities Offering Reform, SEC Rel. No. 33-8591 (July 19, 2005) [70 FR 44722].

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Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC

Subject: Highlight Date: 3/23/2014

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- Permit issuers to file offering circular supplements after qualification of the offering statement in certain circumstances in lieu of post-qualification amendments, including to provide the types of information that may be excluded from a prospectus under Rule 430A.
- <sup>1</sup> Permit continuous or delayed offerings under the proposed rules, but require issuers in continuous or delayed Tier 2 offerings to be current in their annual and semiannual reporting obligations.
- <sup>2</sup> Permit issuers to qualify additional securities in reliance on Regulation A by filing a post-qualification amendment to a qualified offering statement.

*Offering statement:*

- Require issuers to electronically file offering statements with the Commission.
- 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 such documents are publicly filed not later than 21 calendar days before qualification.
- Eliminate the Model A (Question-and-Answer) disclosure format under Part II (Offering Circular) of Form 1-A.
- Update and clarify the Model B (Narrative) disclosure format under Part II of Form 1-A (renaming it as Offering Circular), while continuing to permit the use of Part I of Form S-1 narrative disclosure as an alternative.
- Allow an offering statement to be qualified only by order of the Commission rather than, in the absence of a delaying notation on the offering statement, without Commission action on the 20<sup>th</sup> calendar day after filing.

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 Number: 1      Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC      Subject: Highlight      Date: 3/23/2014  
11:17:36 AM

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 Number: 2      Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC      Subject: Highlight      Date: 3/23/2014  
11:17:50 AM

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the offering statement. Under Section 12(j) of the Exchange Act, an issuer's securities registered under the Exchange Act may be subject to a denial, suspension, or revocation of registration pursuant to an order by the Commission if, after notice and opportunity for a hearing, the Commission finds that the issuer of such securities has failed to comply with any of the provisions of, or the rules and regulations enacted under, the Exchange Act. We do not believe that issuers that, after notice and opportunity for a hearing, are or have been subject to such orders by the Commission within a five-year period immediately preceding the filing of the offering statement should benefit from the provisions of Regulation A, as proposed to be amended. We would therefore exclude such issuers from the category of eligible issuers.

We solicit comment on the proposed issuer eligibility requirements, the suggestions made in the advance comments to date, and on the issues discussed below.



### **Request for Comment**

1. As proposed, in addition to the two newly proposed issuer eligibility requirements, should we otherwise maintain the existing categories of Regulation A issuer eligibility requirements? Why or why not? If not, which categories of issuer eligibility requirements should we alter, and why? Please explain.
2. As proposed, should we add an additional issuer eligibility requirement to exclude issuers that have not filed with the Commission the ongoing reports required by the proposed rules during the two years immediately preceding the filing of a new offering statement (or for such shorter period that the issuer was required to file such reports)? If so, should we only require issuers to be

Number: 1 Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC Subject: Tuesday, March 25th, 2014  
Date: 3/24/2014 1:40:03 PM

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**Dear SEC Folks:**

**You All Could Drive The Fraud Express running regularly between Boston and New York with stops along the way in Washington, DC with this sort of bullet proof protection for the investment community.....**

**With this in mind, let's all agree that fraud doesn't exist, never has, never will and whatever the "F" word means,**

**it's simply....."....an unfortunate series of events..." with no one to blame or hold responsible and we're covered then, right?**

**.....Sounds good to me, so, why don't you all do yourselves a favour and close your eyes and raise your right hand and repeat after me....."we see no evil, we hear no evil and we definitely speak no evil....in our absolute devotion to the protection of the interests of the investment community, whoever they are....so help me God...."**

**In closing, Thank you all again for your best efforts on behalf of the Investor both small are large and the entire investment community that is counting on you all to protect their best interests and do the right thing.....and you all know what that is.....right?**

**Respectfully yours,**

**Pw Carey**

**Senior IT Auditor (GRC), CISA, CISSP**

**These comments are mine and mine alone as we take full ownership, authorship and copyright protection from same.....**

current in their Regulation A ongoing reporting at the time of the filing of a new offering statement in order to be eligible? Alternatively, should we consider a time period other than two years? Why or why not?

3. As proposed, should we add an additional issuer eligibility requirement to exclude issuers that are or have been subject to an order by the Commission denying, suspending, or revoking the registration of a class of securities pursuant to Section 12(j) of the Exchange Act that was entered within five years before the filing of the offering statement? Why or why not? If not, please explain. Alternatively, should we alter the proposed five-year period during which an issuer could not have been subject to an order by the Commission pursuant to Section 12(j) to cover a longer or shorter period of time? Why or why not? If so, please explain.



**a. U.S. nexus other than organization and domicile**

We are seeking comment on whether we should expand availability of the Regulation A exemption to issuers that may not satisfy domicile-based requirements, particularly those that have a substantial United States nexus, such as certain foreign companies with domestic operations, or domestic subsidiaries of foreign multinational companies.<sup>63</sup>

As its name suggests, one goal of the JOBS Act was the creation of jobs within the United States.<sup>64</sup> Expansion of issuer eligibility to include foreign issuers with a

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<sup>63</sup> A domestic subsidiary of a foreign multinational company (*i.e.*, one organized in the United States or Canada) would be eligible to rely on Regulation A if its principal place of business were located in the United States or Canada.

<sup>64</sup> *See, e.g.*, H.R. Rep. No. 112-206, at 4 (2012) (“Small companies are critical to economic growth in the United States. Amending Regulation A to make it viable for small companies to access

 Number: 1 Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC Subject: Tuesday, March 25th, 2014  
Date: 3/24/2014 1:45:45 PM

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**Great idea, and if something accidently goes South....just give the unfortunate actors an ..... 'exemption' since whatever happened wasn't their fault...**

**just an odd series of events which no one could possibly predict.....**

**Respectfully yours, Pw**

substantial U.S. nexus may serve to better implement the JOBS Act goal of domestic job creation. According to statistics from the U.S. Department of Commerce's Bureau of Economic Analysis ("BEA"), many American jobs are created not only by U.S. companies, but by the U.S. affiliates of foreign multinational companies.<sup>65</sup> According to the report, total U.S. employment by majority-owned U.S. affiliates of foreign multinational companies rose in 2011 at nearly twice the rate of employment in the U.S. private-industry sector as a whole.<sup>66</sup> As the BEA data suggest, domestic job creation is not necessarily dependent on company domicile or principal place of business.<sup>67</sup>

Currently, Regulation A is limited to companies organized, and with their principal place of business, in the United States or Canada.<sup>68</sup> The Commission could

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capital will permit greater investment in these companies, resulting in economic growth and jobs. By reducing the regulatory burden and expense of raising capital from the investing public, [Title IV of the JOBS Act] will boost the flow of capital to small businesses and fuel America's most vigorous job-creation machine.").

<sup>65</sup> See Anderson, Thomas, U.S. Dep't of Commerce, Bureau of Econ. Analysis, *Summary Estimates for Multinational Companies: Employment, Sales, and Capital Expenditures for 2011* (Apr. 18, 2013) ("BEA Release 13-16"), at Table 3, available at: <http://www.bea.gov/newsreleases/international/mnc/2013/pdf/mnc2011.pdf>. The BEA's advance summary estimates for 2011 show total employment of approximately 22.9 million workers by U.S. parents of multinational companies (some of which are themselves foreign-owned), accounting for approximately one-fifth of total U.S. private sector employment, and total employment of approximately 5.6 million workers by majority-owned U.S. affiliates of foreign multinational companies, accounting for approximately five percent of total U.S. private sector employment. *Id.* at 1-2. As some U.S. parents of multinational companies are themselves foreign-owned, there is some overlap between the employment figures of U.S. parents of multinational companies and U.S. affiliates of foreign multinational companies. For more information on multinational companies, see [http://www.bea.gov/iTable/index\\_MNC.cfm](http://www.bea.gov/iTable/index_MNC.cfm).

<sup>66</sup> *BEA Release 13-16*, at 2.

<sup>67</sup> See *id.*; see also Matthew J. Slaughter, *American Companies and Global Supply Networks: Driving U.S. Economic Growth and Jobs by Connecting with the World*, Business Roundtable et al. (January 2013), at 9, available at: <http://businessroundtable.org/uploads/studies-reports/downloads/BRT-SlaughterPaper-singles-Dec21.pdf> (noting that both U.S.-headquartered multinational companies and foreign-headquartered multinational companies that operate in the U.S. create tens of millions of well-paying jobs domestically).

<sup>68</sup> The Commission originally proposed the elimination of Canadian issuers from the Regulation A exemptive scheme in 1992 on the grounds that such issuers rarely used the exemption. See SEC Rel. No. 33-6924, at 19. In response to public comment, however, this proposal was not adopted.

 Number: 1      Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC      Subject: Tuesday, March 25th, 2014  
Date: 3/24/2014 1:50:34 PM

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**Dear SEC Folks:**

**If the back stabbing bunch of weazles...oops we mean the Shadow Banks, Black Money as well as The Investment Banks....didn't find the original JOBS act pass the smell test, why would shoveling on more increase its attractive financial fragrance....?**

**No, it probably won't unless of course your into Shadow Banks, Black Money et al.....Respectfully yours, Pw**



## Request for Comment

4. Should issuer eligibility to rely on Regulation A continue to require an issuer to be organized under the laws of the United States or Canada with a principal place of business in the United States or Canada? Or should Regulation A be limited to issuers organized and with a principal place of business in the United States, thereby excluding Canadian issuers? Should Regulation A be made available to “domestic issuers” as described above, or to all issuers, including foreign private issuers? Is there a reason to treat Canadian issuers differently from other foreign issuers? What would the impact be on issuers, investors, and other market participants if the issuer eligibility criteria were broadened? Please explain.
5. If we modify or eliminate current requirements regarding domicile and principal place of business, should we limit availability of the exemption in some other way that reflects a U.S. nexus? If so, how should we define, or in what ways should we limit the availability of the exemption to issuers that demonstrate, a U.S. nexus? Are there criteria we could use that would be easy to administer? If so, what criteria?
6. If we extend issuer eligibility to include foreign private issuers, should we require express consent from such issuers to Exchange Act Section 10(b) liability?<sup>72</sup> Should we consider requiring additional or alternative conditions for the eligibility of such issuers? Why or why not? Should we make other

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<sup>72</sup> In 2010, the U.S. Supreme Court held that Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b), covers only transactions in securities listed on domestic exchanges, and securities purchased or sold domestically. *Morrison v. National Australia Bank Ltd.*, 130 S. Ct. 2869 (2010). *But see*, Section 929P(b) of the Dodd-Frank Act, Pub. L. No. 111-203, § 929P(b).



Number: 1

Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC

Subject: Tuesday, March 25th, 2014

Date: 3/24/2014 1:54:09 PM

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**Dear SEC Folks:**

**What regulations.....?**

**what laws.....?**

**what PCAOB Audits.....?**

**We really must visit again George Orwell's 1984.....as well as Animal Farm.....**

**Amazing, simply amazing use of the English language.....**

**In closing, we look forward to the final conclusion of this dance.... Respectfully yours,**

**Pw Carey**

as proposed to be amended, is intended to provide smaller companies, including early stage companies, the opportunity to raise capital from the general public in a manner that is consistent with the proposed rules. In our view, excluding such companies from proposed Regulation A would be contrary not only to the provisions of current Regulation A, but also to Title IV of the JOBS Act.<sup>85</sup> We do not therefore propose to exclude shell companies from reliance on Regulation A. For the same reasons we are soliciting comment on potential blank check companies' access to, or exclusion from, the exemptive scheme; however, we also seek comment on whether shell companies should be prohibited from relying on Regulation A.



*Operating Companies.* We are also seeking comment on whether we should take a different approach with respect to issuer eligibility requirements and, instead of prohibiting blank check company access to the exemption (as is currently proposed and consistent with current Regulation A), to limit availability of the exemption to companies satisfying a new definition of “operating company.”<sup>86</sup> The Commission previously proposed to limit Regulation A to operating companies in 1992.<sup>87</sup> Though not adopted at that time, the Commission proposed to make the exemption available only “to raise funds to put into the operations of an actual business and not simply for investment.” The proposal would have specifically excluded “those enterprises with the principal business

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<sup>85</sup> H.R. Rep. No. 112-206, at 4 (2012) (“Small companies are critical to economic growth in the United States. Amending Regulation A to make it viable for small companies to access capital will permit greater investment in these companies, resulting in economic growth and jobs. By reducing the regulatory burden and expense of raising capital from the investing public, [Title IV of the JOBS Act] will boost the flow of capital to small businesses and fuel America’s most vigorous job-creation machine.”).

<sup>86</sup> An operating company definition would not alter our current proposal to continue to prohibit reporting company and investment company reliance on Regulation A.

<sup>87</sup> See SEC Rel. No. 33-6924, at 20-21.

 Number: 1      Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC      Subject: Tuesday, March 25th, 2014  
Date: 3/24/2014 1:55:49 PM

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**Nope....**

**Opportunity for fraud....**

**Respectfully yours,**

**Pw**

of investing or reinvesting funds in securities, properties, commodities, business opportunities or similar media of speculative opportunity.”<sup>88</sup> Along the same lines, we seek comment on whether we should exclude certain non-operating companies from Regulation A. We could, for example, limit availability of the exemption to operating companies, defined to include issuers that have generated total revenue in excess of a certain amount (*e.g.*, \$1,000,000) over a certain period of time (*e.g.*, its prior two fiscal years) through the provision of goods or services, or based on similar or different criteria intended to facilitate access to the proposed rules by small companies. <sup>1</sup> Adopting an operating company definition could more effectively eliminate the types of blank check companies, SPACs, and shell companies that are not otherwise the intended beneficiaries of Regulation A from eligibility, an issue we discuss above, request comment on below, and about which several commenters have expressed concern.<sup>89</sup>

*Issuers of Interests in Mineral Rights.* Issuers of fractional undivided interests in oil or gas rights, or similar interests in other mineral rights, have historically been prohibited from relying on Regulation A. Instead, such issuers were permitted to conduct

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<sup>88</sup> *Id.* The adopting release noted that partnerships or certain other entities organized primarily for investment purposes had historically been eligible to use Regulation A, and that after consideration of public comment it was appropriate to continue to make the exemption available to such issuers. See SEC Rel. No. 33-6949, at 36443.

<sup>89</sup> <sup>2</sup>BA Letter (“The purpose and goal of Section 3(b)(2) should . . . be to expand the capital raising opportunities available to operating companies. We are concerned about the possibility of abuse should non-operating companies be able to rely on the exemption. The Commission’s proposed rules should . . . provide that Section 3(b)(2) will not be available for use by issuers that are blank check companies or shell companies and should define “eligible issuer” for purposes of Section 3(b)(2) to exclude specifically these types of issuers.”); WR Hambrecht + Co. Letter (suggesting limiting Regulation A issuers to operating companies, and prohibiting reliance on the exemption by blank check companies, SPACs, and shell companies); NASAA Letter 2 (indicating that offerings by blank check companies and SPACs are generally prohibited as fraudulent offerings under state securities laws).

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 Number: 1      Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC      Subject: Highlight      Date: 3/23/2014  
11:19:44 AM

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 Number: 2      Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC      Subject: Highlight      Date: 3/23/2014  
11:20:30 AM

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offerings in reliance on Regulation B.<sup>90</sup> Regulation B was rescinded in 1996, however, as it was deemed no longer necessary in light of other exemptions available to these types of issuers, such as Section 4(a)(2) of the Securities Act and Regulation D.<sup>91</sup> In light of the elimination of Regulation B and the current ability of such issuers to conduct offerings under, *e.g.*, Rule 506 of Regulation D, we seek comment on whether such issuers should continue to be ineligible to rely on Regulation A, or should now be permitted to conduct offerings under Regulation A.



### **Request for Comment**

7. Should we amend Regulation A to make BDCs eligible to rely on it? Why or why not? Would it raise particular concerns about investor protection? If so, please explain.



8. Would extension of Regulation A issuer eligibility to BDCs be inconsistent with the exemption's current prohibition on use by reporting companies? If so, should we limit the extension of Regulation A issuer eligibility to only non-Exchange Act reporting BDCs? If not, should we permit BDC ongoing reporting under the Exchange Act to satisfy their reporting obligations under Regulation A?<sup>92</sup> If Regulation A eligibility were extended to BDCs, should other rules be amended to require additional disclosure about such issuers? If so, what specific additional disclosure should we require about BDCs?

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<sup>90</sup> Regulation B was an exemption from registration under the Securities Act relating to fractional undivided interests in oil or gas. *See* 17 CFR 230.300 – 230.346 (1995).

<sup>91</sup> *See* SEC Release No. 33-7300 (May 31, 1996) [61 FR 30397].

<sup>92</sup> *See* Section II.E. below for a discussion of an issuer's ongoing reporting obligations under proposed Regulation A.

 Number: 1 Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC Subject: Tuesday, March 25th, 2014  
Date: 3/24/2014 1:55:13 PM

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**Nope....**

**Opportunity for fraud....**

**Respectfully yours,**

**Pw**

 Number: 2 Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC Subject: Tuesday, March 25th, 2014  
Date: 3/24/2014 1:55:24 PM

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**Nope....**

**Opportunity for fraud....**

**Respectfully yours,**

**Pw**



**9.** Should we extend Regulation A issuer eligibility to include blank check companies? Or would such an extension be inconsistent with the intent of Title IV of the JOBS Act, or the Commission’s investor protection mandate? Why or why not?



**10.** If all or some segment of blank check companies are permitted to rely on Regulation A, should we specifically exclude SPACs from being able to rely on the exemption? Why or why not?



**11.** Should we amend Regulation A to make shell companies ineligible to rely on it? Or would the exclusion of shell companies from Regulation A be too broad, such that many small companies or startups would become ineligible to rely on the exemption?



**12.** Should we limit access to Regulation A to issuers that qualify as “operating companies”? If so, should we use the operating company definition described above, or some modified version? Please include a discussion of the effects on issuer access to the exemption that would result from using such a definition as a condition to issuer eligibility.



**13.** Should we reconsider the continued prohibition on use of the Regulation A exemptive scheme by issuers of fractional undivided interest in oil or gas rights, or similar interests in other mineral rights? If so, please explain. Are there risks associated with this type of issuer that merit maintaining Regulation A’s current prohibition on use by such issuers?



**14.** Are there other limitations on issuer eligibility that we should consider? Alternatively, are there other types of issuers that could benefit from

 Number: 1 Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC Subject: Tuesday, March 25th, 2014  
Date: 3/24/2014 1:56:04 PM  
**Nope....**

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**Opportunity for fraud....**

**Respectfully yours,**

**Pw**

 Number: 2 Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC Subject: Tuesday, March 25th, 2014  
Date: 3/24/2014 1:56:14 PM  
**Nope....**

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**Opportunity for fraud....**

**Respectfully yours,**

**Pw**

 Number: 3 Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC Subject: Tuesday, March 25th, 2014  
Date: 3/24/2014 1:56:25 PM  
**Nope....**

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**Opportunity for fraud....**

**Respectfully yours,**

**Pw**

 Number: 4 Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC Subject: Tuesday, March 25th, 2014  
Date: 3/24/2014 1:56:50 PM  
**Yep....**

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**Opportunity for fraud....**

**Respectfully yours,**

**Pw**

 Number: 5 Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC Subject: Tuesday, March 25th, 2014  
Date: 3/24/2014 1:57:08 PM  
**Nope....**

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**Opportunity for fraud....**

**Respectfully yours,**

**Pw**

 Number: 6 Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC Subject: Tuesday, March 25th, 2014  
Date: 3/24/2014 1:57:43 PM  
**Yep....**

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**Opportunity for fraud....so require PCAOB Audit Attestations.....**

**Respectfully yours,**

**Pw**

Regulation A, as proposed to be amended? Please provide data, if available, on the impact of imposing fewer, more, or different limitations on issuer eligibility than we have proposed.



**c. Potential limits on issuer size**

Regulation A currently limits the size of offerings that can be conducted under the exemption, but not the size of issuers eligible to rely on the exemption. We do not currently propose any issuer size-based limitations and to date we have not received any public comment on this issue. While we appreciate that limitations on offering size may, to some extent, create a practical limitation on the ability of larger issuers to rely on Regulation A, we are soliciting comment on potentially limiting access to Regulation A on the basis of issuer size.

We could, for example, look to the standards for “smaller reporting companies” and limit availability of the exemption to issuers with less than \$75 million in public float, or, if unable to calculate the public float, less than \$50 million in annual revenue.<sup>93</sup> Alternatively, consistent with a recent recommendation by the Commission’s Advisory Committee on Small and Emerging Companies (“Advisory Committee”) as to the appropriate size limits for “smaller reporting companies,”<sup>94</sup> we could limit access to Regulation A to companies with a public float of up to \$250 million, or, if unable to

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<sup>93</sup> See 17 CFR 229.10(f).

<sup>94</sup> See SEC Rel. No. 33-9258 (Sept. 12, 2011) [76 FR 57769] (the Advisory Committee was formed to provide the Commission with advice on its rules, regulations, and policies as they relate to, among other things, capital raising by emerging privately-held small businesses and publicly traded companies with less than \$250 million in public float), *available at*: <http://www.sec.gov/rules/other/2011/33-9258.pdf>.

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 Number: 1      Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC      Subject: Tuesday, March 25th, 2014  
Date: 3/24/2014 1:59:03 PM

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**Size does not matter.....it's the trust behind the entity....so nothing has happend in this regard....check the IPO index.....Respectfully yours, Pw**

calculate the public float, less than \$100 million in annual revenue.<sup>95</sup> Limiting access to the exemption on the basis of issuer size might more effectively target the segment of the market that Congress sought to assist by enacting Title IV of the JOBS Act. We solicit comment below on whether the reference to “public float” would be an appropriate metric for the non-reporting companies using Regulation A.



### **Request for Comment**

**15.** Should we limit availability of the Regulation A exemption to smaller issuers?

Or does the \$50 million annual offering limit effectively limit availability of the exemption to smaller issuers such that the Commission need not consider issuer size-based limitations? Why or why not? Should we use issuer size-based limitations to determine the imposition of certain requirements of proposed Regulation A such as the on-going disclosure requirements?



**16.** If we include size-based issuer eligibility requirements, is a test based on the smaller reporting company public float and revenue thresholds appropriate for potential Regulation A issuers? Should we look to the higher thresholds recommended by the Advisory Committee, or other size thresholds?

Alternatively, are there better metrics on which to determine issuer size-based eligibility (*e.g.*, an assets test)? Would the concept of public float have any applicability to non-reporting companies, or to repeat Regulation A issuers, which could develop a trading market for their securities?

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<sup>95</sup> *Recommendations Regarding Disclosure and Other Requirements for Smaller Public Companies*, Securities and Exchange Commission, Advisory Committee on Small and Emerging Companies (February 1, 2013), at 2-3 (the Advisory Committee recommendation was made in the context of potentially revising the definition of a smaller reporting company), *available at*: <http://www.sec.gov/info/smallbus/acsec/acsec-recommendation-032113-smaller-public-co-ltr.pdf>.

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Number: 1      Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC      Subject: Tuesday, March 25th, 2014  
Date: 3/24/2014 1:59:19 PM

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**Size does not matter.....it's the trust behind the entity....so nothing has happend in this regard....check the IPO index.....Respectfully yours, Pw**

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Number: 2      Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC      Subject: Tuesday, March 25th, 2014  
Date: 3/24/2014 1:59:28 PM

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**Size does not matter.....it's the trust behind the entity....so nothing has happend in this regard....check the IPO index.....Respectfully yours, Pw**

exemption because it would permit issuers to conduct a public offering of unrestricted securities that is less burdensome, quicker and less expensive than a public offering subject to full Securities Act registration (*e.g.*, by permitting issuers to incorporate by reference Exchange Act reports into an abbreviated offering statement).<sup>102</sup> This commenter suggested that reporting company access could be limited on the basis of the issuer's size.<sup>103</sup> The other commenter suggested that reporting companies should not be permitted to rely on Regulation A, but companies should be permitted to become a reporting company by means of a Regulation A offering.<sup>104</sup>

Given the availability of scaled disclosure requirements for Securities Act registration and Exchange Act reporting by smaller reporting companies, we continue to believe that reporting companies would not necessarily benefit from access to Regulation A, as proposed to be amended. We therefore do not propose to permit reporting companies to rely on the proposed rules. We are soliciting comment, however, on whether reporting companies should be permitted to rely on Regulation A.



### **Request for Comment**

**17.** Should we amend issuer eligibility requirements to permit reporting companies to rely on the Regulation A exemption? Why or why not? Would reporting companies find Regulation A a useful means of raising capital? How would such a change affect issuers, investors, financial intermediaries, and other market participants?

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<sup>102</sup> ABA Letter.

<sup>103</sup> *Id.* (suggesting reporting company access to the exemptive scheme should be limited to issuers with less than \$1 billion in revenue).

<sup>104</sup> WR Hambrecht + Co. Letter.

Number: 1 Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC Subject: Tuesday, March 25th, 2014  
Date: 3/24/2014 2:00:27 PM

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**Great opportunity for fraud.....**

**Great opportunity.....do we begin to see a pattern here.....?**

**Respectfully yours,**

**Pw**

## 2. 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.”<sup>108</sup> On the basis of the statutory language, it is unclear which types of securities were meant to be excluded, although there is some evidence that suggests the exemption is meant for ordinary—and not exotic—securities.<sup>109</sup> We solicit comment on the types of securities that should be excluded, if any, consistent with the statutory mandate.

We propose to limit the types of securities eligible for sale under both Tier 1 and Tier 2 of Regulation A to the specifically enumerated list of securities in Section 3(b)(3), with the exception of asset-backed securities. Asset-backed securities are subject to the provisions of Regulation AB, an appropriately-tailored regulatory regime enacted to cover such securities that was not in effect when Regulation A was last updated in 1992.<sup>110</sup> We do not believe that Title IV of the JOBS Act was enacted to facilitate the issuance of asset-backed securities, nor do we believe that Regulation A’s disclosure requirements are suitable for offerings of such securities. We therefore propose to exclude asset-backed securities from the list of eligible securities under Regulation A.

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<sup>108</sup> 15 U.S.C. 77c(b)(3).

<sup>109</sup> *Small Company Capital Formation Act of 2011: Markup of H.R. 1070 before the H. Comm. on Fin. Serv. for the 112<sup>th</sup> Congress*, 157 Cong. Rec. 89, (daily ed. June 21, 2011), available at: <http://financialservices.house.gov/calendar/eventsingle.aspx?EventID=247453>.

<sup>110</sup> Regulation AB, 17 CFR 229.1100 *et seq.*, was enacted in 2005. See SEC Rel. No. 33-8518 (Dec. 22, 2004). Asset-backed securities are defined in Rule 1101(c)(1) to generally mean a security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial asset, either fixed or revolving, that by their terms convert into cash within a finite time period.

 Number: 1      Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC      Subject: Tuesday, March 25th, 2014  
Date: 3/24/2014 2:01:31 PM

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**Good idea.....keep um coming....**

**Respectfully yours,**

**Pw**

investors.<sup>123</sup> Both commenters suggested removing current restrictions on affiliate resales in Rule 251(b),<sup>124</sup> which prohibits such sales when the issuer has not had net income from continuing operations in at least one of its last two fiscal years.



Another commenter, however, urged the Commission to prohibit selling securityholders, such as venture capital and private equity firms, from relying on the expanded exemption.<sup>125</sup> In this commenter's view, superior negotiating power at the time of such parties' initial investment and greater access to information about the issuer should disqualify such parties from the exemption because, while maintaining such advantages, they may seek to offload their investment on the general public (and, sometimes against the wishes of the issuer itself).<sup>126</sup> This commenter further argued that selling securityholder offerings do not provide capital to the issuer or contribute to job creation.<sup>127</sup> Alternatively, the commenter suggested that if selling securityholders are permitted to rely on the exemption, the Commission should require approval of a majority of the issuer's independent directors as a pre-condition to any sales.<sup>128</sup>

Selling securityholder access to Regulation A has been a historically important feature of the exemptive scheme. We believe it would continue to be an important part of Regulation A, as proposed to be amended. Allowing selling securityholders access to avenues for liquidity should encourage investment in companies seeking to raise

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<sup>123</sup> WR Hambrecht + Co. Letter.

<sup>124</sup> 17 CFR 230.251(b).

<sup>125</sup> NASAA Letter 2.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

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 Number: 1      Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC      Subject: Tuesday, March 25th, 2014  
Date: 3/24/2014 2:02:25 PM

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**We agree with this individual.....**

**Respectfully yours,**

**Pw**

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 Number: 2      Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC      Subject: Highlight      Date: 3/24/2014  
2:02:50 PM

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We are, however, soliciting comment below on whether verification of the income and net worth limit should be required.



### **Request for Comment**

- 26.** As proposed, should we impose investment limitations on investors in Tier 2 offerings? Or does Regulation A, as proposed to be amended, have sufficient investor protections for Tier 2 offerings, such that an investment limitation for investors is not necessary? Why or why not?
- 27.** Are the proposed investment limitations appropriate in the context of a Tier 2 offering? Why or why not? What impact would the proposed investment limitation restriction have on issuers and investors? Should the proposed limitations on investment not apply to accredited investors? Are there other investment limitation criteria we should consider? For example, should we impose a limitation based on a percentage of total investment assets in addition to, or instead of, annual income or net worth?
- 28.** Alternatively, should the investment limitation be higher or lower than the 10% proposed? If so, what percentage and why would that percentage be appropriate? Would the proposed investment limitation be appropriate for investors that are entities rather than natural persons? Should we establish a minimum annual investment amount, similar to \$2,000 annual investment that would be permitted under our proposed crowdfunding rules, that all investors

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statements, that would verify net worth. Relatedly, issuers may have difficulty ascertaining the veracity or comprehensiveness of any documentation provided to them by investors. *Cf.* SEC Rel. No. 33-9415 (July 10, 2013) [78 FR 4471], at II.B (discussing verification of accredited investor status for private offerings under Rule 506(c) of Regulation D).

 Number: 1 Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC Subject: Tuesday, March 25th, 2014  
Date: 3/24/2014 2:05:24 PM

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**Without a PCAOB Auditor Attestation requirements all the rest is sand in the wind.....totally useless and unnecessary.....**

**Respectfully yours,**

**Pw Carey  
Senior IT Auditor (GRC), CISA, CISSP**

**In closing, keep at it as this is a sweet initial effort on all your parts.....**

filing requirement, including the structured data in Part I of the offering circular, would provide ready access to key information about the issuer and the offering, and would facilitate analysis of the offering in relation to comparable opportunities. We expect that Regulation A offering statements would continue to receive the same level of Commission staff review as registration statements. Additional investor protections would be afforded by Regulation A's limitations on eligible issuers and "bad actor" disqualification provisions, which we are proposing to expand.

The requirements for Tier 2 offerings would provide further protection, because the financial statements contained in the offering circular would be required to be <sup>1</sup>audited, the issuer would have an obligation to provide ongoing reporting to purchasers, and such purchasers would be limited in the percentage of income or net worth that could be invested in a single offering. Ongoing reporting would assure a continuing flow of information to investors and could support the development of secondary markets for Regulation A securities, offering the prospect of reduced investor risk through liquidity.

The approach to investor protection for Tier 2 of Regulation A is in some ways similar to the approach taken under Title III of the JOBS Act and our recently proposed rules for securities-based crowdfunding transactions under Section 4(a)(6) of the Securities Act.<sup>493</sup> In Section 4(a)(6), Congress outlined a new exemption for securities-based crowdfunding transactions intended to take advantage of the internet and social media to facilitate capital-raising by the general public, or crowd. In that provision, Congress directly preempted state securities laws relying, in part, on a variety of investor protections, including disclosure requirements, the use of regulated

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<sup>493</sup> See Section 4(a)(6)(ii) of the Securities Act, 15 U.S.C. 77d(a)(6)(ii), and SEC Rel. No. 33-9470.

 Number: 1  
11:42:30 AM

Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC

Subject: Highlight Date: 3/23/2014

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offerings by, among other things, permitting additional modifications to requirements in light of the size of the offering. We are soliciting comment on additional considerations with respect to Tier 1 and an intermediate tier for offerings incrementally larger than Tier 1 offerings and how they would affect investor protection and capital formation.

### <sup>1</sup>**Request for Comment**

**123.** As proposed, and as is currently the case for Regulation A, state law registration and qualification requirements would not be preempted for Tier 1 offerings. Issuers in offerings of up to \$5 million could also elect to proceed under Tier 2, which would provide for preemption by complying with the additional requirements for Tier 2 (investment limitations, <sup>2</sup>audited financial statements in the offering statement and ongoing reporting). Are there circumstances in which we should provide for preemption for Tier 1 offerings? If so, what are the circumstances? Should we consider including in Tier 1 certain elements of Tier 2, such as investment limitations, audited financial statements in the offering statement, or ongoing reporting, or some combination of these requirements in order to provide for preemption? Should we consider including requirements that draw on those for other approaches to capital-raising? If so, which requirements should we include and why? If we require ongoing reporting for issuers that have conducted Tier 1 offerings, should the substance or frequency of the requirements be different from the requirements proposed for Tier 2, such as requiring only an annual report consisting of annual financial statements and a cover sheet or

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 Number: 1      Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC      Subject: Highlight      Date: 3/23/2014  
11:42:48 AM

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 Number: 2      Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC      Subject: Highlight      Date: 3/23/2014  
11:42:41 AM

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treatment, the number of shareholders of record is often significantly less than the number of beneficial owners.<sup>621</sup>

**g. Liability under Section 12(a)(2)**

Consistent with current Regulation A, sellers of securities under Regulation A as proposed to be amended would be subject to liability to investors under Section 12(a)(2) for any offer or sale by means of an offering circular or an oral communication that includes a material misleading statement or material misstatement of fact. We believe that this would continue to benefit investors by encouraging issuers and selling securityholders to truthfully disclose all relevant facts associated with an offering, which in turn would allow potential investors to better assess the merits of the offering and make informed decisions. We do not expect this requirement to impose any significant costs beyond the liability already incurred by current Regulation A issuers.

In the context of registered transactions, Section 11 liability applies not only to the issuer and underwriter but also, in certain circumstances, to other specified persons, including the accountants, attorneys and other experts involved in preparing the registration statement. In contrast, Section 12(a)(2) liability applies by its terms only to sellers, and does not extend to “those who merely assist in another’s solicitation efforts.”<sup>622</sup> [1] Therefore, we anticipate that auditors and placement agents may not demand as much compensation for bearing the legal risks associated with participation in Regulation A offerings as they would for offerings subject to Section 11 liability. We

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<sup>621</sup> Langevoort, Donald, and Robert Thompson, 'Publicness' in *Contemporary Securities Regulation after the JOBS Act*, Georgetown Law Journal, pp. 12-002.

<sup>622</sup> *Pinter v. Dahl* 486 U.S. 622 (1988), at 651 fn. 21.

 Number: 1  
11:54:38 AM

Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC

Subject: Highlight Date: 3/23/2014

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recognize, however, that Section 12(a)(2) liability may result in lower levels of scrutiny by such intermediaries and may therefore expose investors to additional risks.

### **3. Offering Statement**

We are proposing a number of modifications to the offering statement required under Regulation A. Under current Regulation A, offering materials are submitted to the Commission in paper form. We are proposing to require electronic submission of offering materials so that these materials can more easily be made available to the public.

As discussed in detail above, electronic submission has numerous benefits to issuers and investors. For example, electronic filing allows offering materials to be more easily accessed and analyzed by regulators, investors, and financial market researchers. We anticipate the effect of providing electronic access to offering materials to the public will promote liquidity and pricing efficiency for the issued securities. We also recognize that electronic filing on EDGAR may impose costs on issuers, as discussed below.

We also are proposing a number of modifications to Form 1-A intended to streamline the type of information included in the offering circular. In general, we are proposing to maintain Form 1-A's three-part structure and to make various revisions and updates to the form. For Part I, the substantive additions to Regulation A items are: issuer eligibility, bad actor disqualification and disclosure, and a summary of key issuer financial information and offering details. Since most of this information is already contained in other offering materials, the additional reporting burden in Part I of the Form 1-A should not entail significantly higher costs in terms of time or out-of-pocket expenses.

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 Number: 1      Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC      Subject: Tuesday, March 25th, 2014  
Date: 3/23/2014 11:54:12 AM

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**We must be reading this wrong.....because you all would consider injecting additional financial risk into the investment community....would you?**

**There is no 'may' here....it will expose the investor to greater risk.....by the bye....who are you all working for anyway.....? Just curious....**

audited financial statements should provide investors with greater confidence in the accuracy and quality of the financial statements of issuers seeking to raise larger amounts of capital. <sup>1</sup> We understand that audited financial statements could entail significant costs to issuers, and that the costs of an audit may discourage the use of Regulation A as proposed to be amended. Based on a compilation of data submitted by reporting companies, the average cost of an audit for offerings of less than \$50 million is approximately \$114,000.<sup>623</sup> Additionally, the proposed rules do not require that the auditor be PCAOB registered, which could reduce the cost of an audit for some issuers.

The proposed amendments also include a limitation on the age of financial statements at the time of qualification or filing (on these dates, financial statement data must not be older than nine months). This provision ensures that qualification is based on information that closely reflects a company's current financial condition. The additional costs from these changes are somewhat mitigated by decreases in disclosure requirements regarding the issuer's business and transactions with related persons. The higher level of disclosure would, however, enable investors to have better information for making their investment decisions.

The proposed rules would also allow for continuous or delayed offerings of eligible securities by an eligible issuer under Regulation A, on a basis analogous to shelf registration under Rule 415 for registered offerings, although acquisition shelves would not be permitted under Regulation A. Unlike existing Regulation A, the proposed rules also restrict at-the-market shelf offerings. Issuers would need to update their offering

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<sup>623</sup> See Audit Analytics, *Auditor-Fees*, available at <http://www.auditanalytics.com/0002/audit-data-company.php>. The auditor fee database contains fee data disclosed by SEC reporting companies in electronic filings since January 1, 2001.



provide annual audited financial statements on Form 1-K. The Commission is further proposing that issuers that conducted Tier 2 offerings provide a semi-annual update on Form 1-SA and current event reporting on Form 1-U. These proposed requirements are more extensive, in terms of breadth and frequency, than those for current Regulation A offerings and those for other exempt offerings.<sup>630</sup> The proposed additional disclosures are intended to reduce the information asymmetries between companies that conduct Tier 2 offerings and their potential investors, both at the time of the offering, through the disclosure document, and on an ongoing basis, via ongoing reporting. While we considered whether we should require certain additional disclosures to be provided in structured data format, the proposed rules do not require these disclosures to be machine readable. Not requiring structured data should help to limit costs to issuers while still providing meaningful information to investors. While not requiring a structured data format could limit the ability for investors, academics, regulators and other market participants to analyze firms relying on Regulation A, as proposed to be amended, we do not believe it is advisable to impose such a requirement on issuers relying on the exemption.

**b. Current Event Reporting Requirements**

As discussed above, in addition to the proposed annual and semi-annual reporting requirements, the proposed rules include several event-based disclosure requirements, similar to the event-based reporting of reporting companies on Form 8-K. These events, like the ongoing financial performance of a company, can be important determinants in

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<sup>630</sup> Small private companies, such as those that might consider a Regulation A offering, typically do not disclose information as frequently or as extensively as public companies, if at all. Moreover, unlike public companies, small private companies are not required to have their financial statements audited or to hire an independent third party to certify the information disclosed.

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 Number: 1      Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC      Subject: Tuesday, March 25th, 2014  
Date: 3/23/2014 12:18:30 PM

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**Better yet, lets require no data what so ever as a great cost savings for the entities in question and a great time savings for the poor investor who's too dumb to understand the difference between good data and fraudulent data when it's staring them in the face, ere pocket book....silly investor....**

**Respectfully yours, Pw**

 Number: 2      Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC      Subject: Underline      Date: 3/23/2014  
12:11:30 PM

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an investor's capital allocation decision. The direct cost of reporting these events is often minimal, particularly to the extent that the disclosed information is simply the announcement of a new development, such as the sale of an unregistered security. Of the 26 relevant current reporting items on <sup>1</sup>Form 8-K, listed in the table below, eleven are proposed to be required to be reported, in whole or in part, by issuers that conducted Tier 2 offerings.



**c. Termination or Suspension of Reporting Requirements**



The proposed rules allow for a termination or suspension of an issuer's ongoing reporting obligations <sup>2</sup> if the number of record holders of the class of securities to which the Regulation A offering statement relates falls below 300 persons or suspension upon registration of a class of securities under Section 12 of the Exchange Act or registration of an offering of securities under the Securities Act.

For Tier 2 issuers, which are subject to substantial ongoing reporting requirements, the option for suspending or terminating the Regulation A reporting obligations could be beneficial, especially for issuers that are not seeking secondary market liquidity, and smaller issuers for which the fixed costs of complying with the ongoing disclosure requirements would weigh more heavily.<sup>636</sup> The option to suspend or terminate periodic reporting might be costly for investors because it would decrease the amount of information available about the issuer, making it more difficult to monitor the issuer and accurately price its securities or to find a trading venue that would allow liquidation of the investment. Suspension or termination of reporting might particularly adversely affect minority investors if the lack of current financial or other material information, and/or the presence of large inside or affiliate shareholders could make it easier for controlling shareholders to expropriate capital from minority investors. In most cases we propose to require Tier 2 issuers to notify the Commission upon suspension or termination of reporting requirements through Form 1-Z, which for Tier 2 issuers, will request information regarding the reason for the suspension or termination. To the extent

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<sup>636</sup> See Request for Comment 90 above (seeking comment on, among other things, whether we should exempt some issuers from ongoing reporting on the basis of whether such issuer has taken steps to foster a secondary market for their securities).

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 Number: 1 Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC Subject: Tuesday, March 25th, 2014  
Date: 3/23/2014 12:17:26 PM

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**What a great opportunity for encouraging fraud.....and to think, it only takes 300....amazing....? Pw**

 Number: 2 Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC Subject: Underline Date: 3/23/2014  
12:06:24 PM

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that ongoing reporting is suspended due to registration of a class of securities under the Exchange Act, investors may benefit from enhanced reporting under the Exchange Act requirements.

Although Tier 1 issuers are not subject to periodic and current event reporting requirements, we propose to require issuers of Tier 1 offerings to notify the Commission of their terminated reporting obligation using Form 1-Z upon completion of the offering. Under the proposed rules, Form 1-Z would take the place of Form 2-A, which is currently required upon completion of a Regulation A offering. For Tier 1 issuers, Form 1-Z will require issuers to provide updated information regarding some features of the completed offering, such as the final proceeds raised net of fees.<sup>637</sup> This information will allow the Commission to monitor whether issuers can reliably raise the projected amount of capital in Regulation A offerings. Form 1-Z would elicit limited summary information about the completed offering and the issuer, would not require any additional information from issuers that would not have been forecasted and provided in the offering materials of Tier 1 issuers and, therefore, should not impose substantial additional costs on the issuer.



### **Bad Actor Disqualification**

We propose to amend Rule 262 to include bad actor disqualification provisions in substantially the same form recently adopted under Rule 506(d), but without the categories of covered persons specific to fund issuers, which are not proposed to be eligible to use Regulation A.<sup>638</sup> We believe that the proposed disqualification provisions are not likely to impose significant incremental costs on issuers and other covered

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<sup>637</sup> We do not propose to require notification of the completion of a Tier 2 offering as the information will be included in other ongoing reporting materials required from issuers of Tier 2 offerings.

<sup>638</sup> See proposed Rule 262.

 Number: 1  
12:00:30 PM

Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC

Subject: Highlight Date: 3/23/2014

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persons because the proposed rules are substantially similar to the disqualification provisions under existing Regulation A and other exemptions.

The proposed rules likely would induce issuers to implement measures to restrict bad actor participation in offerings made in reliance on Regulation A, which could help reduce the potential for fraud in these types of offerings. If disqualification standards lower the risk premium associated with the presence of bad actors in securities offerings, any resulting reduction in fraud could also reduce the cost of raising capital to issuers that rely on Regulation A as proposed to be amended. In addition, the requirement that issuers determine whether any covered persons are subject to disqualification might reduce the need for investors to do their own investigations and could therefore increase efficiency.

The proposed disqualification provisions likely would also impose costs on issuers, other covered persons and investors. If issuers are disqualified from participating in offerings made in reliance on proposed Regulation A, they may experience increased costs in raising capital through alternative methods. These costs could hinder potential investment opportunities for such issuers, which could have negative effects on capital formation. In addition, issuers may incur personnel costs to avoid the participation of covered persons who are subject to disqualifying events. Issuers also might incur costs by restructuring share ownership to avoid beneficial ownership of more than 20% from individuals subject to disqualifying events. Finally, issuers might incur costs by devoting resources to seeking disqualification waivers.

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 Number: 1      Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC      Subject: Tuesday, March 25th, 2014  
Date: 3/23/2014 12:05:26 PM

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**The goal is to raise investment dollars (first, last and always) and not induce anything....if someone wants to give us his money....should we conduct a psychological profile using databases that are of questionable veracity...? Nope, we don't think that's our job.....do you?.....Respectfully yours, Pw**

generally unwilling to participate in small offerings because the commissions are not sufficient to warrant their involvement.<sup>649</sup> If the services of financial intermediaries continue to be limited for small offerings under Regulation A as proposed to be amended, it could be difficult for Regulation A issuers to place all offered securities. As noted in the GAO report,<sup>650</sup> increasing the allowed maximum Regulation A offering amount may make placement agents more inclined to participate in offerings because they would be able to collect more compensation from larger offerings. Furthermore, underwriter costs for offerings under Regulation A as proposed to be amended may be lower than for registered public offerings because underwriters would not take on liability under Section 11 of the Securities Act (although they could be liable as sellers under Section 12(a)(2)). Finally, if the requirements for qualification of Regulation A offerings are substantially lighter than the requirements for registered offerings, an underwriting market could develop to provide expedient Regulation A underwriting services.



### **C. Request for Comment**

Throughout this release, we have discussed the anticipated costs and benefits of the proposed rules and their potential impact on efficiency, competition and capital formation. We request and encourage any interested person to submit comments regarding the proposed rules, our analysis of the potential effects of the rules and other matters that may have an effect on the proposed rules. We request comment from the point of view of issuers, investors and other market participants. With regard to any comments, we note that such comments are of particular assistance to us if accompanied

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<sup>649</sup> See, e.g., Karr Tuttle Letter.

<sup>650</sup> See GAO-12-839, “Factors that May Affect Trends in Regulation A Offerings”, (July 3, 2012).

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 Number: 1      Author: Pw\_Carey\_Senior IT GRC Auditor, (CISA, CISSP), Compliance Partners, LLC      Subject: Tuesday, March 25th, 2014  
Date: 3/23/2014 11:59:28 AM

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**Do not create more open windows for fraud than is.....'reasonable' .....Section 11 Liability....and an Auditor's Attestation on file prior to any funds being transferred should be a nice speed bump for the bad guys....don't you all agree...Respectfully yours, Pw**