



## Newsletter May 2015

*The SEC's new Regulation "A+" registration exemption promises to make capital raises easier for middle market companies. Read through to find out what it encompasses*

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MobileSolve is a boutique investment bank providing M&A, capital raising and financial advisory services to companies in the Telecom, Wireless, Internet, Networking and Semiconductor industries.\*

Each month we present a short article on an industry or transaction topic of current interest, and notable transactions in our industries completed during the prior month.

This month's newsletter explains and comments on the SEC's new Regulation A+. We welcome your questions or comments.

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## DOES "A+" MAKE THE GRADE?

By [Steve Gaynor](#) and [Neeraj Baghel](#)

### Background

Despite substantial changes in the global economy in the past two decades, the U.S. capital markets, both public and private, and both debt and equity, remain the largest and most liquid in the world. They offer large companies an opportunity to raise a vast sum at relatively low cost, and investors protections through detailed disclosure requirements, substantial regulatory safeguards and forums for redress of claims. Issuers from around the world come to the U.S. to raise funds.

The U.S. capital markets do not work as well, however, for middle market companies, a large universe defined here as companies with revenues between \$50 Million - \$500 Million. Middle market IPOs and subsequent public financings in recent years have been few compared to prior years.

An important reason is the ready availability of financing from large funds which enables successful companies to obtain equity financing in large amounts without the regulatory burdens and oversight that come with going public.

This development has locked out the retail investor from participating in owning private companies as they grow to become giants. Average investors used to be able to purchase the stocks of companies whose products they regularly used and enjoyed. But today's high-flyers like Uber, AirBnB and others have not listed on public markets, and have been outside their grasp. This seems to many potential investors in such companies especially unfair in the current bull market.

Another reason of equal importance is the difficulty of complying with regulations governing an IPO. No one disagrees that going public, and once public, meeting ongoing regulatory obligations, is an expensive, arduous task. For a middle market company, private market alternatives can be much more attractive.

To provide relief to middle market companies, to allow limited participation by retail investors in private company fundings, and more broadly to keep the U.S. capital markets competitive with other financial centers around the world, the U.S. government in 2012 passed the JOBS Act. Despite the Act's name, a bit of political theatre, the new laws deregulated the capital markets in several areas, including the amounts that could be raised, and documentation and disclosure requirements.

The securities regulator, the SEC, was tasked with developing regulations to implement the new law. The result is Regulation "A+," a revision of the existing regulation "A," one alternative for a middle market company to raise capital.

### Regulation A+ Described

The Regulation A+ exemption from the legally mandated registration requirements of IPOs (i.e., Exchange Act Section 12(g) and subsequent reporting requirements) is available for issuers organized and with their principal place of business in the U.S. or Canada. There are two tiers of offerings that can be made:

- **Tier 1:** securities offerings of up to \$20 million in any twelve-month period, with no more than \$6 million of the securities from selling shareholders who are affiliates of the issuers; and
- **Tier 2:** securities offerings of up to \$50 million in any twelve-month period, with no more than \$15 million of the securities from selling shareholders who are affiliates of the issuers.

Issuers seeking to raise less than \$20 million may do so under either Tier 1 or Tier 2, but if they select Tier 2, they must comply with the additional requirements of all Tier 2 issuers, including:

- audited financial statements in the offering circular, prospectus and annual reports;
- ongoing reporting obligations including annual reports (new Form 1-K), semiannual reports (new Form 1-SA) and current event reports (new Form 1-U); and
- investment limits on persons who are not accredited investors (as defined by Rule 501(a) of Regulation D) to no more than (i) for individuals, ten percent of the greater of the person's annual income or net worth; or (ii) for entities, ten percent of the greater of annual revenue or net assets at the end of the fiscal year.

Following the IPO, securities issued through a Tier 2 offering will continue to be exempt from the mandatory registration requirements by meeting certain conditions, such as using a registered transfer agent, and remaining subject to the ongoing reporting obligations. If a Tier 2 issuer subsequently wants to be listed on a national exchange, it can file a short-form Exchange Act registration statement (Form 8-A) if certain conditions are met.

Additional new rules will soon be implemented that will allow Regulation A+ offerings, to enjoy the advantages of other recent rule changes with respect to public offerings, including the submission of confidential draft offering statements for nonpublic review by the SEC staff before filing, the use of “testing the waters” communications with potential investors and the electronic filing of offering materials on EDGAR, the SEC’s online documentation service.

### Why Regulation A+ Is Important

Cutting through the formal definitions and legalities, the Regulation A+ exemption is important because it creates a reasonably inexpensive and effective (i.e., less bureaucratic) framework by which private middle market companies can tap the large retail investor market for equity financings. Among the more important changes, an issuer can:

- Raise up to \$50 million, a substantially higher amount than previously allowed for middle market offerings;
- Make a general solicitation using advertising, greatly increasing the potential investors that may be attracted;
- Approach unaccredited investors, substantially enlarging the market size of potential investors; and
- Avoid registering the offering in each of the states where investors reside if it is between \$20 million and \$50 million; in other words, federal pre-emption of state blue sky laws. Note Tier 1 offerings will remain subject to these state law requirements.

### What Regulation A+ Does Not Do

Many entrepreneurs and advisors have been waiting for regulations that will permit companies to sell equity through online websites. It is the next logical step in the SEC’s progression toward easier and more open stock investing by retail investors in private companies. Regulation A+ does not address crowdfunding.

Whether the SEC will soon promulgate such crowdfunding rules is an open question. There is much controversy about the wisdom of making an asset class that is illiquid and prone to losses and failure freely available to the investing public, and in particular to unaccredited investors who by definition do not meet certain income and net worth thresholds. The agency may decide to see how Regulation A+ fares first.

Does “A+” make the grade? Clearly it is another big step toward modernizing U.S. capital market regulation, especially for middle market companies. But without fully addressing crowdfunding and other modern techniques that can potentially be used to efficiently raise capital, one must conclude at best the SEC’s final grade has yet to be determined.

Source: MobileSolve Research

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## Transactions

The following are notable M&A transactions and capital financings announced or completed in the last month.

### Notable M&A Transactions

Target	Target Industry	Acquirer	Transaction Value (in \$ millions)	Transaction Highlights
Hike Labs	Mobile Publishing	Pinterest	-	Hike Labs develops mobile publishing applications
Minco Technology Labs	Semiconductor	Micros Components	-	Minco Technology is a fab-less manufacturer, processor and value-added distributor of mission critical semiconductors
Motion Computing	Mobile Devices	Xplore Technologies	16	Motion Computing, headquartered in Austin, Texas, produces slate tablet PCs
Orchestrate	Mobile Apps	CenturyLink	-	Orchestrate, Inc. provides a platform for building large scale web and mobile applications.
Wicentric	Bluetooth	ARM Holdings	-	Wicentric Provides bluetooth software solutions for the development of wireless products

### Notable Capital Financings

Company Name	Industry	Amount Raised (in \$ millions)	Total Amount Raised (in \$ millions)	Business Description
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Aquantia Corp.	Semiconductors	25	189	Aquantia Corp. is a semiconductor company that develops integrated circuits for cloud computing and data center deployments
Duo Security, Inc.	Mobile Security	30	48	Duo Security, Inc. provides mobile software security services.
Free Stream Media Corp.	Packaged Software	-	8	Free Stream Media Corp. publishes smart TV applications. Its smart TV software seamlessly integrates streaming video, advertising and broadcast TV.
Frenzoo Ltd.	Packaged Software	1	2	Frenzoo Ltd. develops 3D lifestyle and fashion mobile games for girls and women.
Char Software	Mobile Analytics	35	60	Char Software (Localytics.com) provides mobile usage data and analytics for the mobile market.
InAuth	Mobile Security	20	20	InAuth provides mobile security software applications to financial institutions.
Life On Air	Mobile Video	14	18	Life On Air (meerkatapp.co) operates an online mobile-to-mobiles live video platform.
Movidius, Inc.	Packaged Software	40	86	Movidius, Inc. provides multimedia applications for mobile phones and other electronics.
Vserv Digital Services	Mobile Ads	15	18	Vserv provides mobile advertisement applications.
XinLab	Mobile Video	-	35	Xinlab's Vuclip is the most widely-used mobile video search site in the world.

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