

- **Testing the Waters.** The regulations permit companies to “test the waters” to see if there is likely to be serious interest in their proposed offering before they incur the time and expense of preparing and filing the offering circular with the SEC. Company solicitations of interest in the offering may be oral or written. However, after an offering circular has been filed with the SEC, but before it has been approved, a copy of the offering circular filed with the SEC should be included with any written solicitation of interest in the offering. This provision, along with the fact state regulators are not involved in the review process, give Tier II Regulation A+ offerings a realistic chance of becoming a viable alternative for raising capital.
- **Ongoing Disclosure Requirements.** With the exception described below, there are annual and semi-annual reporting requirements (including audited financial statements) as well as a requirement to report material current events. However, these requirements terminate after reporting for the fiscal year in which the offering circular was approved if the number of shareholders is less than 300.
- **Securities Fully Transferable.** Although broker-dealers are unlikely to be making a market in these securities and most companies will want to require investors to enter into stockholders’ agreements that restrict transfers, securities issued in connection with a Regulation A+ offering are freely transferable under federal securities laws.
- **Restrictions on Use of Regulation A+.** Regulation A+ can be used by a variety of entities (corporations, LLCs, etc.) across a wide range of industries. However, it may NOT be used by investment companies, including private equity, venture capital or hedge funds.

Some Practical Considerations

It remains to be seen whether Regulation A+ will open the doors to a new wave of Internet crowdfunding, which includes both accredited and non-accredited investors. Unfortunately, Tier I rules share many of the same characteristics that have made old Regulation A so impractical – the requirement to prepare extensive disclosure documents that then must be filed with and approved by both federal and state regulators. However, the Tier II rules, which both preempt the requirement for state review and permit companies to test the water to assess the potential interest in their proposed financing, coupled with the \$50 million cap, may well make Tier II Regulation A+ offerings a viable alternative for many private companies.

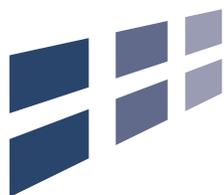
If we can provide any additional information, please contact your regular PLDW attorney or William F. Miller, telephone: 508-771-1360 or 401-824-5100; email: wmiller@pldw.com.

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