

# Regulation A Tier 2 vs. EGC On-Ramp IPO

The following chart compares briefly the requirements associated with conducting a Regulation A Tier 2 offering with a concurrent listing of a class of securities on a national securities exchange, with the requirements associated with undertaking an initial public offering (IPO) as an emerging growth company (EGC).

	REGULATION A TIER 2 WITH LISTING ON NATIONAL EXCHANGE	EGC IPO
MAXIMUM OFFERING SIZE	Up to \$50 million in any 12-month period, including up to \$15 million of secondary sales by affiliates.	No limit.
CAP ON SECONDARY PORTION OF OFFERING IN INITIAL YEAR	During initial 12-month period after Reg A offering, secondary sales (including by non-affiliates) are capped at 30% of the aggregate offering price. After the initial 12-month period, there is no cap on the percentage of a Reg A offering that may consist of sales by non-affiliates.	No cap.
REQUIREMENT TO FILE OFFERING STATEMENT	<p>Form 1-A filed with the SEC, including the offering circular (OC) used to market the offering.</p> <p>Disclosure requirements similar to Form S-1 requirements.</p> <p>Form 1-A is subject to review and comment by the SEC and must be “qualified” by the SEC before any sales may be consummated (first-time issuers are eligible for non-public review by the SEC).</p> <p>21 days before qualification, need to publicly file initial draft Form 1-A and all subsequent non-public amendments and correspondence.</p>	<p>Form S-1 filed with the SEC.</p> <p>Disclosure requirements include: risk factors, a business section, MD&amp;A, related party transactions, plan of distribution disclosure and financial statements, modified executive compensation disclosures (see below).</p> <p>Form S-1 may be confidentially submitted to the SEC for review, subject to requirement to publicly file the original submission and all amendments at least 15 days before the road show.</p>
FINRA REQUIREMENTS	Reg A offerings that involve a FINRA member firm are generally subject to the FINRA public offering filing and review process.	EGC IPOs that involve a FINRA member firm are generally subject to the FINRA public offering filing and review process.
REQUIRED FINANCIAL STATEMENTS	<p>Offering circular must include two years of U.S. GAAP financial statements, audited in accordance with PCAOB standards. Must comply with Article 8 of Regulation S-X.</p> <p><b>Staleness</b></p> <ul style="list-style-type: none"> <li>• Filing within 3 months after recently completed fiscal year-end (FYE), provide financials for the two most recently completed FYEs prior to most recently completed FYE plus interim no earlier than six months from end of the most recently completed FYE.<sup>1</sup></li> <li>• Filing within 3-9 months after recently completed FYE, provide financials for two most recently completed FYEs.<sup>2</sup></li> <li>• Filing after 9 months after most recently completed FYE, provide financials for two most recently completed FYE and interim financials no earlier than 6-months after most recently completed FYE.<sup>3</sup></li> </ul>	<p>Same financial statement requirements.</p> <p><b>Staleness</b></p> <ul style="list-style-type: none"> <li>• Financial statements go stale after 135 days (gap between date of effectiveness of the registration statement and the date of the financial statements in the filing may not be more than 135 days).</li> </ul>

<sup>1</sup> From January 1, 2016 to March 31, 2016: December 2013 and 2014 year-end financials and Interim financials no earlier than June 2015.

<sup>2</sup> From March 31, 2016 to September 30, 2016: December 2014 and 2015 year-end financials.

<sup>3</sup> After September 30, 2016: December 2014 and 2015 year-end financials and Interim financials that are within 6 months of December 2015.

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	REGULATION A TIER 2 WITH LISTING ON NATIONAL EXCHANGE	EGC IPO
TESTING THE WATERS COMMUNICATIONS	May engage in test the waters communications before and after filing a Form 1-A. Communications must include prescribed legends and be attached as an exhibit to the Form 1-A filed with the SEC.	Limited to QIBs and IAIs. SEC may request to review testing the waters materials.
BLUESKY PREEMPTION	Yes.	Yes.
LIABILITY FOR OFFERING DISCLOSURE	Negligence standard under 1933 Act Section 12(a)(2).	Strict liability under Section 11 of the 1933 Act.
ONGOING REPORTING OBLIGATION	Continuous reporting requirements: annual (Form 1-K), semiannual (Form 1-SA) and current reports (Form 1-U).	Continuous reporting requirements: annual (Form 10-K), quarterly (Form 10-Q) and current reports (Form 8-K).
TERMINATION OF ONGOING REPORTING OBLIGATION	To terminate ongoing reporting requirements, must file a Form 1-Z (so long as the number of security holders is fewer than 300 persons).	To terminate ongoing reporting requirements, must delist and deregister.
CORPORATE GOVERNANCE	Company must comply with Nasdaq governance requirements for listed companies, subject to all applicable exemptions, such as the controlled company exemption and the IPO phase-in provisions. Once listed on Nasdaq, the company must comply with applicable Sarbanes-Oxley requirements, subject to EGC accommodations.	Same.
FAMILIARITY	Process is still considered “new” and may be unfamiliar to many institutional investors.	Well-understood by institutional investors and investment bank equity research analysts.
RESEARCH COVERAGE AND MARKET MAKERS	Research analysts are less likely to provide coverage; investment banks may not make a market in the security.	More likely that research analysts may commence coverage and that investment banks may make a market in the security.
FILING FEES	None.	\$100.70 per \$1,000,000 aggregate offering (the fee is calculated by multiplying the aggregate offering amount by .0001007).