

The Reg A Report

October 2016

Regulation A is a provision of the JOBS Act and was signed into law on April 5, 2012

For details on the provisions of the Job Act that amended the Reg A rules, please refer to the earlier Reg A report.

[Click HERE to view the Reg A Report August-2016](#)

Listing The Reg A stock

The securities may be eligible for listing on the “Over The Counter Market” and under certain conditions a recognized exchange. One thing that is not commonly known is that the FINRA examiners will not issue a symbol for a company that has an open offering. That is, you cannot expect to get a new stock symbol *and then* be able to do your Reg A offering.

The process and timeline may look something like this for conducting a Reg A Tier II offering and listing on the OTC Market. OTC Markets website- <http://www.otcmarkets.com/home>

The company will engage a qualified securities law firm to prepare the offering documents in conjunction with the company’s auditor who will provide the PCAOB qualified audits that are part of the offering documents. The Reg A registration statement (Form 1-A) will be filed with the SEC which will lead to a period of comments and responses (30 to perhaps 180 days in a complicated case) and eventually, the prosecution of the registration to the point of SEC approval or “Qualification”.

If you have engaged a broker dealer to assist in the offering, the dealer compensation and other aspects including the plan of distribution will also need to be approved by FINRA and they may require language that must be included in the registration statement.

During the registration period the company and broker dealer, if involved, can take indications of interest but cannot accept funds from investors under the Reg A offering.

Once the offering has been qualified, funds may be accepted and placed in an appropriate escrow account to be released to the company upon meeting whatever minimum, if applicable, was required to have the offering go forward.

Upon finalizing the offering, or at some point where management determines they have raised sufficient capital, they will officially declare the offering to be closed.

The Reg A offering also carries the benefit of being exempt from State Blue Sky regulations which is in itself a major advantage allowing for an offering to be conducted in all 50 states at significant savings in filing and legal fees. Keeping in mind that a broker involved in the offering must still be licensed in the

state where the investor is resident and must ensure that the offering meets FINRA suitability standards for the investor in question.

At this time a market maker can begin the process of filing a form 211 application with FINRA to request a symbol and approval for the security to be listed on one of the OTC market's tiers, most likely either OTCQB or OTCQX depending on the size and quality of the company.

See the OTCMarkets issuer services pages for more details on qualifications:

<http://www.otcmarkets.com/services/companies/services-overview>

Although there is considerable work and liability for the market maker in filing and getting approval for a new company to be listed, the Market Maker is not allowed to be compensated for this service. The idea was that a market maker should be providing this as a service to the shareholders and be expecting to earn compensation by way of trading commissions earned once the issue is listed. This is becoming increasingly difficult since the SEC and FINRA have been on the march against micro-cap stocks and imposing heavy penalties on the gatekeepers such as market makers, transfer agents and clearing firms for any potential involvement in penny stock fraud.

The Market maker is also allowed an exclusive 30-day period to trade the stock once it is listed, but since DTC has implemented a process that requires a company to have FINRA approval prior to an application for DTC eligibility, that 30 days will have long passed before the stock can actually trade.

The bottom line is that you should be discussing the 211 process with a qualified market maker early in the process to ensure that you will be able to find someone to file the form 211.

OTCMarkets publishes the following list of participants, but there are only a few that will entertain a 211 filing for a micro company.

<http://www.otcmarkets.com/research/broker-dealer-dir>

The Market Maker will ask for a long list of documents and officer and director background checks and expect to be indemnified against any liabilities that may result in their being involved.

Among the documents and information they may request are the following:

1. Charter and Articles of Incorporation of parent and any subsidiaries where the parent holds more than a 10% interest.
2. By laws of the corporation.
3. CUSIP number for common shares.
4. Form of Capitalization- a description and schedule outlining the details of all securities outstanding including warrants, options, preferred shares and other notes and rights including free trading status and number of shareholders holding free trading shares.

5. A schematic diagram that depicts how the issuer came to its current state. The diagram should include, dates of mergers, name changes and any transaction involving the issuance of or exchange of shares.
6. The registration statement or exemption relied upon in obtaining the free trading shares currently outstanding.
7. A listing of products currently offered, including pricing and any contracts for supply of manufacturing, raw materials as well as distribution, sales or marketing agreements for the company's products.
8. Details of any past investigation or regulatory action taken by the SEC or other governmental or listing agency against the company or any of its directors or officers.
9. Recent press releases.
10. Management list showing each director, officer and senior manager and any changes since the last Form 1-A filing or amendment.
11. Copies of budgets, business plans or financial projections that are currently applicable including how the company intends to further its business plan in the coming year including who will do what and when and what financing is required and how the company intends to raise that capital.
12. Acquisition or merger agreements completed within the last two years or that may be currently contemplated or any material amendment to any acquisition or merger agreements since the last Form 1-A filing or amendment.
13. Terms and conditions of all debt issued by the company and any change in status since the last Form 1-A filing or amendment.
14. The latest Form 1-A filing or amendment.
15. A breakdown of any material changes to the balance sheet, any material change to the monthly revenue or net earnings since the last Form 1-A filing or amendment.
16. Details of any debt or other obligations that are in default or that the company believes will be in default in the foreseeable future.
17. A Litigation schedule outlining all material current or pending litigation and current status of each.
18. Private placement schedule outlining details of all private placements or that are currently contemplated. Please include offering memorandums or prospectuses, subscription agreements and cancelled checks of investors.
19. A list of who solicited the shareholders to invest and a list of shareholders solicited that did not invest.
20. A regression diagram showing the original issuance of shares from treasury and any transfers between shareholders from that point forward to the current shareholder status.
21. A list of any FINRA or other Firms that participated in the offerings.
22. A schedule identifying the current shareholders and what relationships they have to the company or its officers and directors.
23. A list of any other companies that the current officers or directors have requested a listing quotation on.
24. A list of any officers or directors of any corporate or entity type stockholders of the issuer.

25. A signed statement from the directors, officers and any parties controlling the issuer that indicate they have no intent to either effect a sale of shares or engage in a merger that would result in a change of control of the issuer for the foreseeable future.
26. A list of consultants, PR or IR persons (or entities) that currently have any agreements for services with the company and a description of those services.
27. Other matters- A list indicating any other agreement, instrument, document, or information relating to the company where there would be likelihood that a reasonable investor would consider important or which should be reviewed in connection with an investment in the proposed offering.
28. A copy of the current certified shareholders list indication free trading and restricted shares and officer and director holdings.
29. Completed D & O questionnaires for all officers and directors.

The Form 211 will be completed and the Market Maker will include any additional information they feel will be material to the FINRA 211 review when they submit the form to FINRA.

The form is listed on the FINRA website here:

<https://www.finra.org/sites/default/files/AppSupportDoc/p126234.pdf>

A period of comment and response will commence with responses from FINRA taking anywhere from a week to perhaps 30 days or more depending on their work load and the complexity of the proposed listing. In most cases 2-3 rounds of comments will get a Form 211 application through the process to where FINRA will issue a symbol and officially allow market makers to make two-sided market in the stock.

It is not clear what will be required of a market maker in meeting his obligations under rule 15c211 in terms of a Reg A listing as a company may qualify for listing without being a "33 Act" SEC reporting company which calls for the company and its officers and directors to be subject to the Sarbanes Oxley legislation, which provides severe penalties for companies and their officers making false or fraudulent statements in their offerings and filings.

This aspect of a "Fully Reporting" company provides a specific "safe haven" for the market maker allowing him or her to rely on these SEC filings without having to do any further or independent due diligence relative to the information contained in the filings. Without that safe harbor it is still unclear how FINRA will view the market maker's responsibilities in relying on information obtained from the company and in the Form 1-A and its amendments. It is also unclear what liability a market maker will be exposed to for the same reason.

This is an overview of rule 15c211 provided by FINRA:

http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=1675&print=1

In recent conversations with OTCMarkets management it appears that so far there has only been one Reg A equity issue listed. That company is ELIO Motors. Unfortunately, I believe that Elio will be a

catastrophic failure as a business and will adversely affect the regulators view of Reg A and the benefits that it can be to small issuers raising capital. More on that later...

Next Month we'll talk about pricing, DTC eligibility and getting your shares deposited so that the stock can actually trade.

Below are links to the Actual Reg A SEC form and the latest Reg A registrations that have been filed.

Link to actual 1-A Form

<https://www.sec.gov/about/forms/form1-a.pdf>

Latest Reg A Filings

<https://www.sec.gov/cgi-bin/srch-edgar?text=1-A%2C+not+POS&first=2016&last=2016>