Regulation A+ - What Broker-Dealers Need to Know

A great deal has been written about the updated and expanded version of Regulation A, the rules for which went effective in 2015. The new version of Regulation A, dubbed "Reg A+" provides an exemption for small offerings of up to $50 million worth of securities in any one year period. Little, however, has been written about the requirements from the perspective of FINRA member firms that may act as selling agents or underwriters in Reg A+ offerings.

Just to recap, Reg A+ offerings now consist of two classes of offerings: "Tier 1"—up to $20 million, including no more than $6 million by selling security holders; and "Tier 2"— up to $50 million, including no more than $15 million by selling security holders. Reg A+ also allows for "testing the waters" and Tier 2 offerings made to "qualified purchasers," which include accredited investors and non-accredited investors that meet certain requirements, will not require state blue sky registration.

As most people who have been following the development of Reg A+ are aware, companies wishing to conduct a Reg A+ offering are required to file a Form 1-A offering statement with the SEC and have that offering statement qualified before they can sell securities under the rule. Not everyone, however, is aware that FINRA member firms who participate as selling agents or underwriters in Reg A+ offering also have filing obligations with FINRA. In

particular, member firms need to be cognizant of the requirements of FINRA Rules 5110 and 2210.

FINRA Rule 5110, also known as the Corporate Financing Rule, requires member firms that participate in a Reg A+ offering to file the offering statement, along with any exhibits and amendments, with the Corporate Financing Department of FINRA. These documents must be filed no later than 1 business day after they are filed or submitted to the SEC. No sales under the Reg A+ offering can commence until FINRA issues a "no objections" opinion regarding the member firm's compensation in the offering. It is important to note that the "no objections" opinion does not express any determination regarding compliance with FINRA's suitability or supervision rules. *See* FINRA Rule 2111 (Suitability) and FINRA Rule 3110 (Supervision).

FINRA Rule 2210 governs a member firm's communications with the public and requires that all communications be fair, balanced and not misleading. Pursuant to the rule, an appropriately qualified principal at the member firm must approve any communications that are to be distributed to the public prior to their dissemination. Solicitation materials may also need to be filed with FINRA in advance if the offering involves a public "direct participation program." As defined in FINRA Rule 2310, a direct participation program is any offering that involves a security that provides for pass through tax treatment, including but not limited to certain oil and gas programs, real estate programs, and other similar securities.

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