

# Regulation A+: What Do We Know So Far?

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## Summary

In recent years small companies have engaged in relatively few registered initial public offerings (IPOs) and have relied more often on offerings exempt from registration. However, Regulation A, one such exemption from securities registration, has seen limited use in recent years. As part of implementing the JOBS Act, the Commission amended Regulation A. These amendments (Regulation A+) became effective on June 19, 2015.

In the approximately 16 months since the amendments became effective, Regulation A+ securities offerings have outpaced the past rate of Regulation A activity. As of October 31, 2016, prospective issuers have publicly filed offering statements for 147 Regulation A+ offerings, seeking up to approximately \$2.6 billion in financing. Of those, approximately 81 offerings seeking up to approximately \$1.5 billion have been qualified by the Commission. (Offerings must be qualified by the Commission before issuers may sell securities). Approximately \$190 million has been reported raised during that period, although this likely understates the true amount raised due to reporting timeframes.

Issuers are availing themselves of both Tier 1 and Tier 2, but Tier 2 offerings were on the margin more common among qualified offerings, accounting for 60% of qualified offerings. The offer amount varied with issuer size, with the average issuer was seeking up to approximately \$18 million.

Companies mainly offered equity, which accounted for over 85% of all offerings.

The majority of offerings were conducted on a best-efforts, self-underwritten basis, consistent with the small offering size and the small size of a typical issuer.

Most of the issuers have previously engaged in private offerings, consistent with the use of amended Regulation A as a capital raising on-ramp.

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Overall, early signs indicate that Regulation A+ may offer a potentially viable public offering on-ramp for smaller issuers—an alternative to a traditional registered IPO—and either an alternative or a complement to other securities offering methods that are exempt from Securities Act registration. As an important caveat, the types of issuers that use this offering method in the future may differ from early adopters, and medium- and long-term outcomes of Regulation A+ issuers remain an area for future analysis.

## 1. Background

Regulation A was adopted by the Commission under Section 3(b) of the Securities Act in 1936 as an exemption from registration for small issues. The annual offering limit permitted under this exemption had been raised several times and was changed to \$5 million by 1992.<sup>2</sup> Nevertheless, the exemption has been used infrequently over the past two decades.<sup>3</sup>

The Jumpstart Our Business Startups Act (the “JOBS Act”) of 2012 amended Section 3(b) of the Securities Act of 1933,<sup>4</sup> directing the Commission to adopt rules exempting from the registration requirements of the Securities Act offerings of up to \$50 million per year. The Regulation A amendments (“Regulation A+”) were proposed by the Commission on December 18, 2013<sup>5</sup> and adopted on March 25, 2015.<sup>6</sup> The amendments became effective on June 19, 2015. This study provides an early look at market activity since the effectiveness of Regulation A+. Data from the first sixteen months is summarized to describe broad market trends and patterns in offering and issuer characteristics.

Regulation A+ can be thought of as an alternative to a small registered IPO<sup>7</sup> and as either an alternative or a complement to other securities offering methods that are exempt from registration under the Securities Act.

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<sup>2</sup> See *Proposed Rule Amendments for Small and Additional Issues Exemptions Under Section 3(b) of the Securities Act*, SEC Release No. 33-9497 (December 18, 2013), [79 FR 3925 (January 23, 2014)] available at <https://www.sec.gov/rules/proposed/2013/33-9497.pdf> (“Regulation A+ Proposing Release”).

<sup>3</sup> See *Factors that May Affect Trends in Regulation A Offerings*, GAO–12–839 (July 2012), available at <http://www.gao.gov/assets/600/592113.pdf> (“GAO report”). The report examined Regulation A activity during 1992-2011 and found a decline in the use of Regulation A that began in 1997-98. The report found 19 filings and 1 qualified filing in 2011. See also *Amendments to Regulation A*, SEC Release No. 33-9741 (March 25, 2015) [80 FR 21805 (April 20, 2015)], available at <http://www.sec.gov/rules/final/2015/33-9741.pdf> (“Regulation A+ Adopting Release”), at 21868 (noting that 26 offerings, excluding amendments, were qualified by the Commission in calendar years 2012 to 2014, which amounts to an average of 8–9 qualified offerings per year).

<sup>4</sup> Section 401 of the JOBS Act designated Section 3(b) as Section 3(b)(1) and created a new Section 3(b)(2), directing the Commission to adopt rules adding a class of securities exempt from the registration requirements of the Securities Act for offerings of up to \$50 million of securities within a twelve-month period.

<sup>5</sup> See note 2.

<sup>6</sup> See Regulation A+ Adopting Release.

<sup>7</sup> Issuers that have previously sought financing via Regulation A+ are able to utilize the exemption again in subsequent years, thus, for repeat issuers, Regulation A+ offerings can be thought of as follow-on offerings.

The revised rules preserve, with some modifications, provisions regarding issuer eligibility, offering circular contents, testing-the-waters solicitations, and disqualification of issuers or covered persons that have certain types of criminal convictions, regulatory or court orders, or other specified events (“bad actors”). Regulation A+ rules align practice in certain areas with prevailing practice for registered offerings, create additional flexibility for issuers in the offering process, and establish an ongoing reporting regime for some issuers.

Regulation A+ rules created two tiers of offerings, each with slightly different requirements.<sup>8</sup> “Tier 1” offerings may not exceed \$20 million in a twelve-month period and “Tier 2” offerings may not exceed \$50 million in a twelve-month period.<sup>9</sup> The rules impose additional limits on sales by selling securityholders within these offer caps.<sup>10</sup> Further, the rules required electronic filing, modernizing the filing process.<sup>11</sup>

As under Regulation A prior to the 2015 amendments, some potential issuers are not eligible for Regulation A+: Exchange Act reporting companies; certain investment companies; companies without a specific business plan or with a business plan that involves a merger or acquisition with an unidentified company; issuers seeking to sell asset-backed securities or fractional undivided interests in oil, gas or other mineral rights; companies subject to “bad actor” disqualification rules; and companies that have been subject to any order of the Commission under Section 12(j) of the Exchange Act in the past five years or that have not filed required ongoing reports in the past two years.<sup>12</sup>

As illustrated in Figure 1, the Regulation A capital raising process is initiated when an issuer “files” an offering statement with the Commission. After Commission staff reviews the offering statement, the offering statement may be declared qualified by a “notice of qualification”.<sup>13</sup> After a Regulation A offering statement has been “qualified”, issuers may begin selling securities.

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<sup>8</sup> Tier 1 offerings are subject to lower offer limits and the requirement of state qualification. Tier 2 offerings are subject to higher offer limits; audited financial statement and ongoing reporting requirements; and investment limitations.

<sup>9</sup> See 230.251(a). For offerings up to \$20 million, issuers can choose whether to rely on Tier 1 or Tier 2.

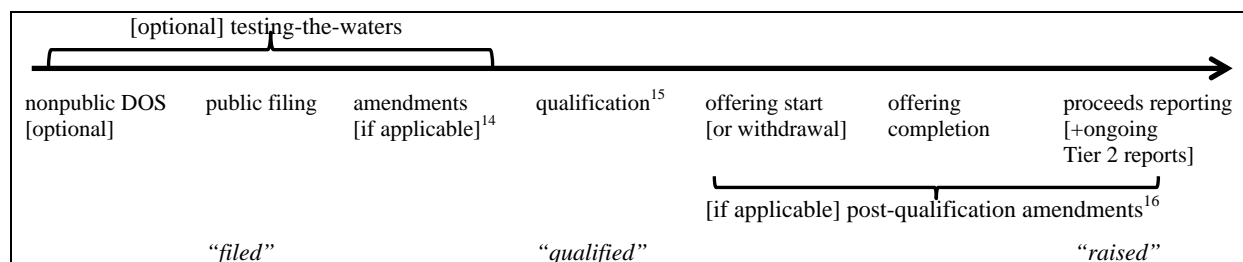
<sup>10</sup> See 230.251(a). Affiliates of the issuer (*e.g.*, insiders) are limited to \$6 million in a Tier 1 offering and \$15 million in a Tier 2 offering in any twelve-month period. Further, in the first twelve months, existing security-holders (both affiliated and non-affiliated) are limited to 30% of the total amount.

<sup>11</sup> See 232.101(a)(1)(xviii).

<sup>12</sup> See 230.251(b).

<sup>13</sup> See 17 CFR 200.30-1.

**Fig. 1. Timeline for a Successful Regulation A+ Offering**



The rules permit new issuers (that have not previously sold securities under a qualified Regulation A offering statement or an effective securities registration statement) to submit a draft offering statement (DOS) for nonpublic staff review.<sup>17</sup> Submission of a DOS is not required prior to public filing. Issuers are not required to proceed with the public filing after a DOS submission.

Under certain conditions,<sup>18</sup> issuers may solicit prospective investor interest (“test the waters”) before or after filing the offering statement, but prior to the qualification of the offering statement. Testing the waters is not required prior to an offering. Issuers may choose not to proceed with the offering after testing the waters.

An issuer may not sell securities – or accept payment, or a commitment to a future payment – until after the offering statement has been qualified by the Commission.

<sup>14</sup> For example, to revise the offering statement disclosures to address staff comments or to amend financial statements. *See* 230.252(f).

<sup>15</sup> No sales of securities may be made until the offering statement has been qualified by the Commission. *See* 230.251(d)(2)(i)A. For purposes of the below discussion of offering statistics, “qualified offerings” is used to denote offering statements that have been qualified by the Commission.

<sup>16</sup> For example, in continuous offerings, to offer additional securities, make annual updates of financial statements, or reflect a fundamental change in the information in the offering statement. *See* 230.252(f)(2). As another example, if issuers did not file information omitted from the offering circular pursuant to 230.253(b) within 15 business days of qualification of the offering statement, it must be filed as a post-qualification amendment. *See* 230.253(c).

<sup>17</sup> *See* 230.252(d). The DOS must be substantially complete upon submission in order for staff to begin its review. The non-public DOS, any amendments to it, and comment letter correspondence must be publicly filed on EDGAR no less than 21 calendar days prior to the qualification of the public filing.

<sup>18</sup> *See* 230.255. Testing the waters involves oral or written communications to determine whether prospective investors could be interested in the offering. Testing the waters may not involve solicitation or acceptance of payment or a commitment to future payment for securities. Antifraud provisions of the federal securities laws apply.

Besides the offering statement, Regulation A issuers face certain reporting obligations. Tier 1 issuers are required to file an exit report (Form 1-Z<sup>19</sup>) after the offering is completed or terminated. Tier 2 issuers are subject to an ongoing reporting regime,<sup>20</sup> which encompasses semi-annual reports (on Form 1-SA<sup>21</sup>), annual reports (on Form 1-K<sup>22</sup>), and current reports (on Form 1-U<sup>23</sup>), unless the issuer exits Tier 2 reporting.<sup>24</sup> Because Tier 2 issuers must file annual reports, they may report offering proceeds on the annual report and may, but are not required to file, an exit report. Tier 2 issuers must provide audited financial statements in the offering statement (Form 1-A<sup>25</sup>) and annual reports. There are certain other differences between Tier 1 and Tier 2 requirements, including investment limits and state registration.

The rest of this study is organized as follows. Section 2 examines offering and issuer characteristics. Section 3 highlights factors that may be important for future development of the market and future analysis. Section 4 concludes.

## **2. Regulation A+ offering activity and characteristics of offerings and issuers**

The sample construction and variable definitions are described in Appendix A. Statistics are computed for all filings and for the subset of filings that have been qualified, as specified. For offering statements that have been amended before qualification, the latest amendment is used.

Issuers appear to be taking advantage of the higher offering limits provided by Regulation A+. There has been an uptick in Regulation A filing activity since Regulation A+ became effective, both in terms of the number of offerings per month and the average amounts sought in a given offering, compared to the period leading up to Regulation A+. Table 1 indicates that between June 19, 2015 and October 31, 2016, issuers in 147 offerings sought up to approximately \$2.6 billion in aggregate, including up to approximately \$1.5 billion across 81 qualified offerings.<sup>26</sup> The average issuer was seeking up to approximately \$18 million. For comparison, in the 12 months ending June 18, 2015, there were approximately 51 filings seeking to raise up to approximately \$159 million, including 12 qualified filings seeking to raise up to approximately

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<sup>19</sup> See <http://www.sec.gov/about/forms/form1-z.pdf>. See also 230.257(a).

<sup>20</sup> See 230.257(b).

<sup>21</sup> See <http://www.sec.gov/about/forms/form1-sa.pdf>.

<sup>22</sup> See <http://www.sec.gov/about/forms/form1-k.pdf>.

<sup>23</sup> See <http://www.sec.gov/about/forms/form1-u.pdf>.

<sup>24</sup> See 230.257(d). Tier 2 issuers may elect to stop ongoing Tier 2 reporting if they have fewer than 300 shareholders of record (1200 for bank holding company issuers), assuming the issuer has filed all required reports since inception or for the most recent three fiscal years. Also, Tier 2 issuers are not subject to ongoing Tier 2 reporting requirements if they begin Exchange Act reporting.

<sup>25</sup> See <http://www.sec.gov/about/forms/form1-a.pdf>.

<sup>26</sup> Based on the main sample (see Table 1). Robustness tests add back to the sample offer amounts sought in post-qualification amendments, resulting in generally similar amounts of up to approximately \$2.7 billion across 150 filed offerings, including \$1.6 billion across 84 qualified offerings (see Appendix D).

\$34 million. Adjusting for the length of the sample period, if the level of Regulation A activity observed in the year prior to the amendments were to be sustained, it would have translated into approximately 70 filings seeking up to \$218 million, including 16 qualified filings seeking up to \$46 million over a 500-day period.<sup>27</sup>

Despite its recent growth, Regulation A+ activity has remained modest compared to the aggregate level of Regulation D market activity.<sup>28</sup> This pattern cannot be attributed to a single cause. The relatively recent adoption of Regulation A+ could influence individual issuers' potential preference for better-established offering methods with which issuers, professional service providers, and investors may be generally more familiar. Other factors may include the availability of alternative sources of financing, such as Rule 506 offerings and other offerings exempt from registration under Section 4(a)(2) of the Securities Act, securities-based crowdfunding offerings under Section 4(a)(6) of the Securities Act, bank financing; upfront costs and time required to initiate an offering; uncertainty about the ability to raise capital from investors with varying sophistication levels in the presence of information asymmetries between small, relatively unknown issuers and prospective investors; the state of intermediary services; and aggregate market and investor sentiment trends.

## 2.1. Offering size

Offer size statistics, across all offerings and by offering tier, are shown in Table 1. The median (average) issuer was seeking to raise \$14 (\$18) million in a given offering. Amounts sought in qualified offerings were roughly similar, with the median of \$10 million and the average of \$18 million. These indicate maximum amounts sought as reported in the offering statement. These amounts are significantly larger than the amounts sought by issuers in Regulation A offerings prior to Regulation A+, suggesting that the typical issuer is seeking to take advantage of the higher offer size permitted under the amended rules. At the same time, the majority of issuers were seeking amounts below the tier cap. Approximately 29% of issuers across all offerings set maximum offer amounts equal to the tier cap, aggregating offerings by the same issuer. It is not possible with the data available at this time to definitively determine how issuers select amounts offered, but offer amounts likely reflect a combination of issuer financing needs, market conditions, and expected investor demand. The small, early-stage nature of a typical issuer in the pool of Regulation A filers so far (discussed in more detail in Section 2.3) is also consistent with the observed offer sizes.

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<sup>27</sup> See also note 3, discussing the evidence of the low absolute level of Regulation A filing activity in prior years.

<sup>28</sup> While some issuers in Regulation D and registered equity offerings may be similar to Regulation A+ issuers, caution regarding direct comparisons is warranted. Alternative offering methods differ with respect to direct and indirect costs, offering process, regulatory and disclosure requirements, investor base, involvement of intermediaries, analysts, and other market participants, and other features. Aside from observable issuer characteristics, it is likely that the selection of the offering method is affected by unobservable differences in characteristics such as growth potential and information risk.

As can be seen from the table, Tier 2 offerings comprised approximately half of all offerings and over half of qualified offerings. As expected, a typical Tier 2 issuer was seeking to raise a larger amount. The median (average) amount sought by a Tier 2 issuer in a given offering was \$20 (\$26) million among all filings and \$20 (\$26) among qualified offerings. By comparison, the median (average) amount sought by a Tier 1 issuer in a given offering was \$6 (\$10) million among all filings and \$5 (\$7) million among qualified offerings.

**Table 1. Offer amounts sought<sup>29</sup>**

<b>Panel A: All offering statements</b>	All	Tier 1	Tier 2	Diff.
Total offer amount, in mln	\$2,633	\$701	\$1,932	
% of total offer amount	100%	27%	73%	
Number of offerings	147	72	75	
% of total number of offerings	100%	49%	51%	
Number of issuers	145	70	75	
% of total number of issuers	100%	48%	52%	
Median offer amount, in mln	\$14	\$6	\$20	\$14 *
Average offer amount, in mln	\$18	\$10	\$26	\$16 *
% issuers with offer amount per issuer at tier limit	29%	26%	32%	6%
<b>Panel B: Qualified offering statements</b>	All	Tier 1	Tier 2	Diff.
Total offer amount, in mln	\$1,463	\$222	\$1,241	
% of total offer amount	100%	15%	85%	
Number of offerings	81	33	48	
% of total number of offerings	100%	41%	59%	
Number of issuers	79	31	48	
% of total number of issuers	100%	39%	61%	
Median offer amount, in mln	\$10	\$5	\$20	\$15 *
Average offer amount, in mln	\$18	\$7	\$26	\$19 *
% issuers with offer amount per issuer at tier limit	23%	6%	33%	27% *

<sup>29</sup> See Appendix A for sample and variable definitions. The data are obtained from publicly filed Form 1-A offering statements. The sample excludes post-qualification amendments and offerings withdrawn after qualification. Offer amounts are based on the maximum amounts sought as reported in the offering statement. Some offerings have missing data on some offering or issuer characteristics. Statistical significance of differences in means between Tier 2 and Tier 1 offerings is assessed using two-sided (unmatched sample) *t*-test. Statistical significance of differences in medians between Tier 2 and Tier 1 offerings is assessed using Wilcoxon rank-sum test for unmatched samples. Statistical significance at the 5% level is denoted by \*.

## 2.2. Offering characteristics

Regulation A+ offering characteristics are summarized in Table 2. Equity offerings accounted for the majority of offerings (87% of all offerings and 90% of qualified offerings).

Offering circular data also provides insights into a typical issuer's strategy for conducting a Regulation A+ offering. The majority – close to 90% – of all offerings and of qualified offerings were conducted on a best efforts basis. Tier 2 offerings were more likely than Tier 1 offerings to be conducted on a best efforts basis (the difference was statistically significant). The reported rate of underwriter involvement (discussed in detail in Section 3.2 below) was relatively low, at 18% for all offerings and 10% for qualified offerings, based on information disclosed in Form 1-A. The smaller size, potentially low level of investor recognition, and informational asymmetries typically associated with small issuers might discourage underwriters or cause them to assess high fees. This is broadly consistent with the lower rate of underwriter involvement and greater prevalence of self-underwritten offerings among small registered IPOs.<sup>30</sup>

Approximately 54% of all offerings and 65% of qualified offerings involved offerings on a delayed or continuous basis. Continuous offerings give issuers more flexibility in extending the offering based on market conditions and issuer financing needs, without having to incur the cost and time of initiating and completing a new qualification process. Issuers in continuous offerings are able to file offering circular supplements in lieu of amendments for certain changes, which results in potentially greater flexibility of the offering process.<sup>31</sup> Tier 2 offerings account for most of the continuous offerings, with a statistically significant difference in the rate of use between Tier 2 and Tier 1 (both among filed and qualified offerings). Between 77% and 88% of Tier 2 offerings are made on a delayed or continuous basis, compared to 31%-33% of Tier 1 offerings. The rules require Tier 2 issuers to be current in their ongoing reporting obligations to be able to conduct a continuous offering.

Nationwide solicitation was relatively common, particularly for Tier 2 offerings. The median filed (qualified) Tier 2 offering statement disclosed that the issuer would solicit investors in 50 states. The median filed (qualified) Tier 1 offering statement disclosed that the issuer would

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<sup>30</sup> See, e.g., Gleason, Kimberly, Ravi Jain, and Leonard Rosenthal, 2006, Alternatives for Going Public: Evidence from Reverse Takeovers, Self-Underwritten IPOs, and Traditional IPOs, working paper, [http://ssrn.com/abstract\\_id=890714](http://ssrn.com/abstract_id=890714).

<sup>31</sup> In some circumstances issuers in ongoing offerings must file post-qualification amendments, which are subject to qualification, including in the event of a fundamental change in the information in the offering statement arising after qualification and at least every 12 months after qualification to include updated financial statements. See 17 CFR 230.252. Further, material changes to offering terms and qualification of additional securities require a new offering statement or a post-qualification amendment. See note to paragraph (b) of 17 CFR 230.253. Finally, continuous or delayed offerings may be conducted for up to 3 years since the initial qualification date, after which a new offering statement must be filed and qualified. See 17 CFR 230.251.



solicit investors in 4 (8) states. The difference was statistically significant. Geographic distribution of states of solicitation is shown in Fig. 2a-d below.

The majority (around 80%) of offerings did not involve testing-the-waters.<sup>32</sup> However, Tier 2 offerings accounted for the majority of testing-the-waters solicitations (the difference was statistically significant).<sup>33</sup>

Approximately 10% of all offerings involved sales by existing (affiliated or unaffiliated) securityholders.<sup>34</sup> Tier 2 offerings were more likely than Tier 1 offerings to be associated with such sales, with 16% of Tier 2 offerings seeking to qualify sales by existing securityholders, including 13% seeking to qualify sales by affiliate securityholders. The difference was statistically significant across all filed offerings but insignificant in the subsample of qualified offerings. It appears that existing securityholders, including corporate insiders, are somewhat more likely to perceive a Tier 2 offering as an opportunity to liquidate a portion of their holdings. Secondary sales constituted approximately 21% of the maximum amount sought in the median offering with secondary securityholder sales. A question for future analysis is the extent of adverse selection that may arise from affiliate sales in an offering. However, such information costs may be mitigated by caps on affiliate sales, the disclosure requirements of Form 1-A, and (for Tier 2 issuers) the ongoing reporting requirements. It remains to be seen whether the presence of affiliate sales affects the likelihood that the issuer raises the targeted amount.

Finally, in spite of the increase in offering activity and the size of a typical offering, the length of the Commission qualification process for new Regulation A offerings appears to have decreased after the effectiveness of Regulation A+.<sup>35</sup> Across qualified offerings, the median time from initial public filing to qualification was 78 days (see Table 2). Tier 2 offerings were associated with longer qualification times than Tier 1 offerings. The time to qualification depends on the length of time required for Commission staff review as well as the time that issuers require to make revisions related to staff comments, if any.<sup>36</sup> Factors that are likely to be relevant for both

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<sup>32</sup> Additionally, some prospective issuers that have not yet filed offering statements may currently be testing the waters before a potential filing, but it is unclear how many of those prospective issuers will proceed with a Regulation A filing in the future.

<sup>33</sup> A possible reason for this difference is the presence of state restrictions, which can limit a Tier 1 issuer's ability to solicit investor interest without having qualified the offering with all states where an issuer's solicitation may reach investors (investor location can be particularly difficult to delineate with online solicitation methods).

<sup>34</sup> As part of those annual offer limits, the amounts offered on behalf of selling securityholders that are affiliates of the issuer may not exceed \$6 million and \$15 million for Tier 1 and Tier 2, respectively, and may not exceed 30% of the offering size in an initial offering.

<sup>35</sup> From 2002 through 2011, Regulation A filings took an average of 228 days to qualify. Average time to qualification exceeded 300 days in 2012–2014. *See* Regulation A+ Adopting Release at 21869.

<sup>36</sup> Tier 1 offerings also must undergo qualification by at least one state, so the aggregate time to qualification may be longer than the time to qualification by the Commission staff if, for example, issuers initially file

the length of review time and the length of time to file the amended offering statement include the extent of completeness of the initial submission, the extent to which offering statement disclosures conform to the format and content requirements of Regulation A+, including narrative disclosure and financial statement requirements, the complexity and novelty of the offering features; and the existence of potential eligibility or disqualification issues. Among the potential factors associated with the decrease in the length of the qualification process are faster Commission staff reviews of publicly filed offering statements; the adoption of electronic filing in place of paper submissions; and the option to submit a draft offering statement for nonpublic review, which enables issuers to preview and address issues with the offering statement disclosures and add missing information prior to publicly filing the offering statement. Approximately 16% of all issuers and 22% of issuers in qualified offerings have filed a draft offering statement.<sup>37</sup> As noted above, past draft offering statements must be filed if the issuer proceeds to publicly file the offering statement.

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with the state. Data on the length of time associated with state qualification for Tier 1 issuers is not available.

<sup>37</sup> Issuers may elect not to proceed with a public filing after submitting a draft offering statement for nonpublic review. Those issuers are not a part of the sample.

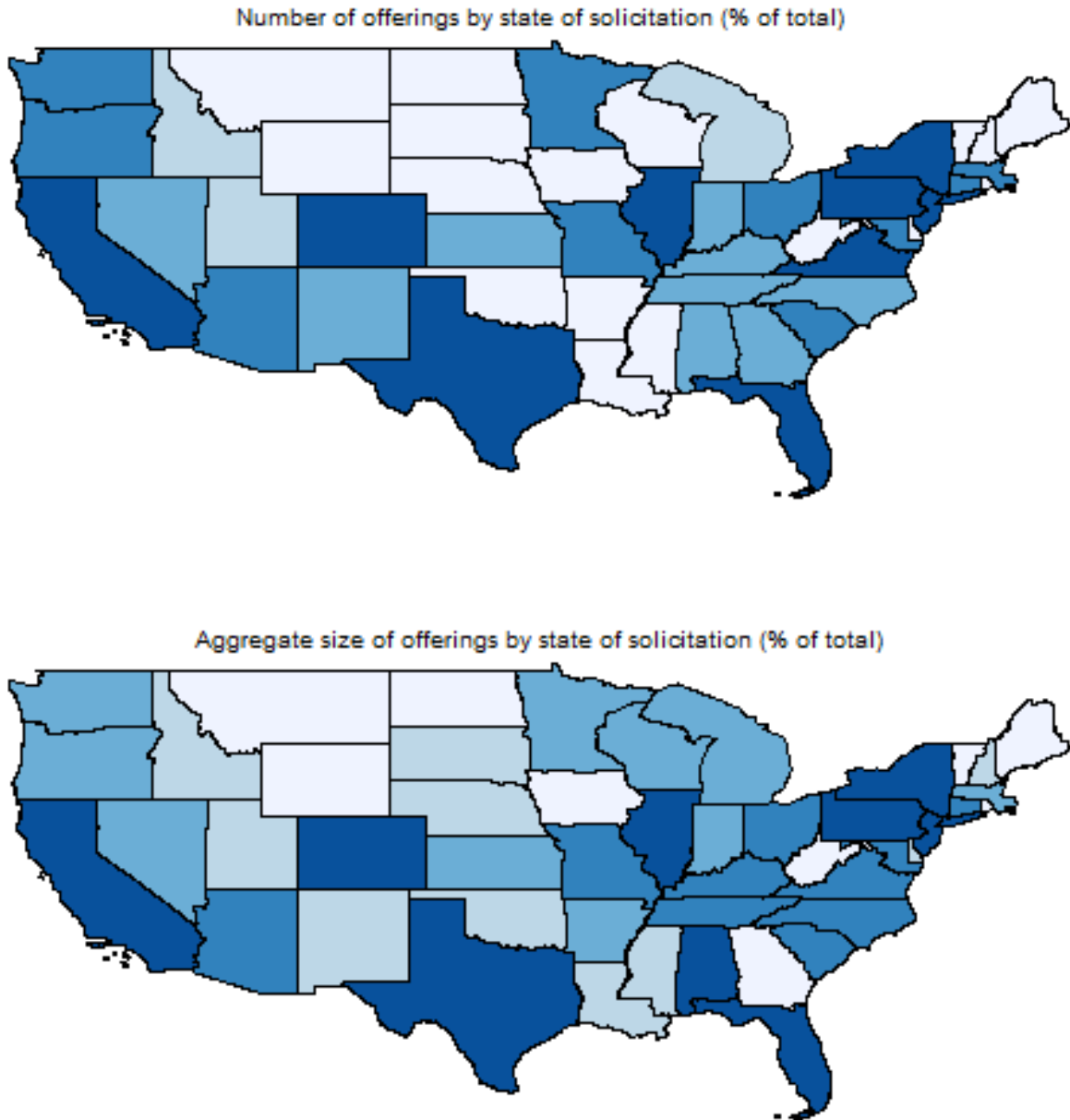
**Table 2. Offering characteristics<sup>38</sup>**

<b>Panel A. All offering statements</b>	All	Tier 1	Tier 2	Diff.	
Security type: Equity	87%	85%	89%	5%	
Security type: Debt	9%	11%	7%	-4%	
Security type: Other	4%	4%	4%	0%	
Testing-the-waters	19%	4%	33%	29%	*
Best efforts offerings	87%	81%	93%	13%	*
Underwriter involved	18%	13%	23%	10%	
Any intermediary involved	38%	24%	52%	28%	*
Continuous offering	54%	31%	77%	47%	*
Audited financial statements provided	61%	19%	100%	81%	*
Offering includes sales by existing securityholders	10%	3%	16%	13%	*
Offering includes sales by affiliate securityholders	7%	1%	13%	12%	*
Median number of states of solicitation	48	4	50	46	*
Average number of states of solicitation	29	13	44	32	*
<b>Panel B. Qualified offering statements</b>	All	Tier 1	Tier 2	Diff.	
Security type: Equity	90%	85%	94%	9%	
Security type: Debt	6%	9%	4%	-5%	
Security type: Other	4%	6%	2%	-4%	
Testing-the-waters	22%	6%	33%	27%	*
Best efforts offerings	88%	76%	96%	20%	*
Underwriter involved	10%	0%	17%	17%	*
Any intermediary involved	36%	18%	48%	30%	*
Continuous offering	65%	33%	88%	54%	*
Audited financial statements provided	75%	39%	100%	61%	*
Offering includes sales by existing securityholders	10%	3%	15%	12%	
Offering includes sales by affiliate securityholders	9%	3%	13%	9%	
Median number of states of solicitation	48	8	50	42	*
Average number of states of solicitation	31	13	43	31	*
Median number of days to qualification	78	68	104	36	*
Average number of days to qualification	110	93	121	27	

<sup>38</sup>

*See note 29.*

Fig. 2a-d. States of solicitation<sup>39</sup>



<sup>39</sup> See Appendix A for sample and variable definitions. Maps depict U.S. 48 states (Canada, Alaska, and Hawaii are excluded from the map above). Darker colors indicate greater concentration of offerings. An individual offering may involve solicitation in multiple states. When an offering involves solicitation in multiple states, the state of solicitation receives 'full credit' for that offering.

## Offering costs

Offering statements provide some insight into certain types of offering costs, with several caveats.<sup>40</sup> As can be seen from Table 3, a typical issuer incurred some legal costs associated with the offering. The median legal cost was reported to be approximately \$40,000 (\$50,000) based on all filings (qualified offerings). The median audit cost was reported as approximately \$15,000 for filed and qualified offerings. The median intermediary fee, where reported, was approximately \$150,000 among all offerings and approximately \$100,000 among qualified offerings.<sup>41</sup> As can be seen from Table 3, averages were higher than medians due to the distribution of fees being right-skewed. Tier 2 offerings were generally associated with higher fees in dollar terms. Costs as a percentage of offering proceeds are not estimated due to a small number of completed offerings.

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<sup>40</sup> Available data pertains only to certain types of direct offering costs as of the report date. Issuers may incur additional costs prior to completing the offering and/or revise these estimates in subsequent amendments, reports of sales, or the annual report. Certain costs (*e.g.*, printing, platform etc.) may not be included. Due to the nature of the market, a measure comparable to underpricing or bank loan spreads is not available. Thus, these cost estimates should be viewed as *ex ante* issuer estimates of certain types of direct costs, rather than as an inclusive estimate of total offering costs. Finally, small sample size limits the power of comparisons across tiers. The number of observations used in each estimate is shown in Table 3. For some offerings, costs are not reported. *See also* Regulation A+ Adopting Release, note 311 (indicating that disclosure is only required in the fee table to the extent applicable fees were incurred by the issuer in connection with the offering).

<sup>41</sup> Intermediary fees are the sum of underwriter fees, sales commissions, and finder and promoter compensation, if any. Many offering statements did not report intermediary fees, consistent with the majority of offerings not utilizing intermediaries.

**Table 3. Certain offering fees and expenses<sup>42</sup>**

<b>Panel A. All offering statements</b>	All	Tier 1	Tier 2	Diff.
Legal fees, in \$000s (median)	\$40	\$25	\$50	\$25 *
Legal fees, in \$000s (average)	\$85	\$53	\$108	\$55 *
Obs.	[117]	[48]	[69]	
Audit fees, in \$000s (median)	\$15	\$5	\$15	\$10 *
Audit fees, in \$000s (average)	\$26	\$10	\$31	\$21 *
Obs.	[92]	[23]	[69]	
Intermediary fees, in \$000s (median)	\$150	\$100	\$438	\$338
Intermediary fees, in \$000s (average)	\$900	\$423	\$1,119	\$697 *
Obs.	[73]	[23]	[50]	
<b>Panel B. Qualified offering statements</b>	All	Tier 1	Tier 2	Diff.
Legal fees, in \$000s (median)	\$50	\$35	\$60	\$25 *
Legal fees, in \$000s (average)	\$105	\$70	\$127	\$57 *
Obs.	[70]	[27]	[43]	
Audit fees, in \$000s (median)	\$15	\$7	\$15	\$8 *
Audit fees, in \$000s (average)	\$24	\$13	\$29	\$16 *
Obs.	[61]	[18]	[43]	
Intermediary fees, in \$000s (median)	\$100	\$0	\$165	\$165
Intermediary fees, in \$000s (average)	\$876	\$325	\$1,067	\$742
Obs.	[33]	[10]	[29]	

<sup>42</sup> See note 29.

### 2.3. Issuer characteristics

Data on issuer characteristics is presented in Table 4. Consistent with the analysis in the Regulation A+ Adopting Release, a typical issuer based on offering data to date was relatively small. The typical issuer had median assets of approximately \$0.1 million across all filings and approximately \$0.2 million across qualified filings. Approximately two-thirds of all filings and of qualified offerings were by issuers with assets up to \$1 million. Approximately 92% of all filings and 87% of qualified filings were by issuers with total assets not exceeding \$100 million. However, the distribution of issuer size was noticeably right-skewed. Average assets were approximately \$51 million across all issuers and \$79 million across issuers in qualified offerings. The difference in median or average asset size between Tier 1 and Tier 2 issuers was not statistically significant.

Both tiers of issuers, particularly, Tier 1, exhibited an extreme right tail in asset size. The incidence of issuers with assets above \$1 million was not statistically different between Tier 1 and Tier 2, but Tier 1 had a significantly higher share of issuers with assets above \$100 million, largely due to several banks that undertook Tier 1 offerings. Similarly, size measured by the number of employees exhibited a considerable right tail. The median issuer across all filed (qualified) offerings had 3 (3) employees, but the average issuer had 47 (29) employees, respectively.

Based on all filings with available data, the median issuer had no cash, property, plants and equipment (PP&E), long-term debt,<sup>43</sup> revenue, or net income. The median issuer in a qualified offering had approximately \$0.05 million in cash; zero PP&E; no long-term debt; no revenues; and no net income. Averages tended to deviate from medians due to skewness in the distribution. Around 34% of all issuers and 38% of issuers in qualified offerings had generated revenue. Approximately 20% of all issuers and 27% of issuers in qualified offerings had net income. These characteristics are consistent with the present pool of filers being primarily comprised of small, early-stage companies with limited collateral, which may restrict their ability to obtain a bank loan or other debt financing on favorable terms. Such filers could be development-stage companies whose valuations are based mainly on growth options. It is likely that such filers' ability to remain as a going concern is contingent on obtaining financing.

Overall, there was considerable heterogeneity among Regulation A issuers and a small number of relatively larger issuers. It is not possible to precisely quantify in the data filers' growth options or compare them to startups utilizing other financing channels.

**Table 4. Issuer characteristics**<sup>44</sup>

<b>Panel A. All offering statements</b>	All	Tier 1	Tier 2	Diff.
Total assets, in mln (median)	\$0.1	\$0.1	\$0.3	\$0.2
Total assets, in mln (average)	\$50.8	\$62.1	\$40.3	-\$21.8
Total revenues, in mln (median)	\$0.0	\$0.0	\$0.0	\$0.0
Total revenues, in mln (average)	\$2.8	\$5.3	\$0.7	-\$4.6
Net income, in mln (median)	\$0.0	\$0.0	-\$0.03	-\$0.03 *
Net income, in mln (average)	\$2.0	\$4.5	-\$0.3	-\$4.8
Cash and cash equivalents, in mln (median)	\$0.0	\$0.0	\$0.0	\$0.0
Cash and cash equivalents, in mln (average)	\$2.0	\$3.0	\$1.0	-\$2.0
PP&E, in mln (median)	\$0.0	\$0.0	\$0.0	\$0.0
PP&E, in mln (average)	\$1.5	\$1.9	\$1.2	-\$0.7
Long-term debt, in mln (median)	\$0.0	\$0.0	\$0.0	\$0.0
Long-term debt, in mln (average)	\$3.4	\$2.8	\$4.0	\$1.1
Number of employees (median)	3	4	2	-2
Number of employees (average)	47	18	73	55
Prior unregistered offerings	61%	37%	84%	47% *
Assets up to \$1 mln	68%	70%	67%	-3%
Assets up to \$100 mln	92%	87%	97%	10% *
Zero revenues	66%	75%	58%	-17% *
Revenues up to \$1 mln	92%	98%	86%	-12% *
Positive net income	20%	26%	15%	-11%

<sup>44</sup> The unit of observation is an issuer. For issuers with multiple offerings or amendments, the information is based on the latest filing. See note 29.

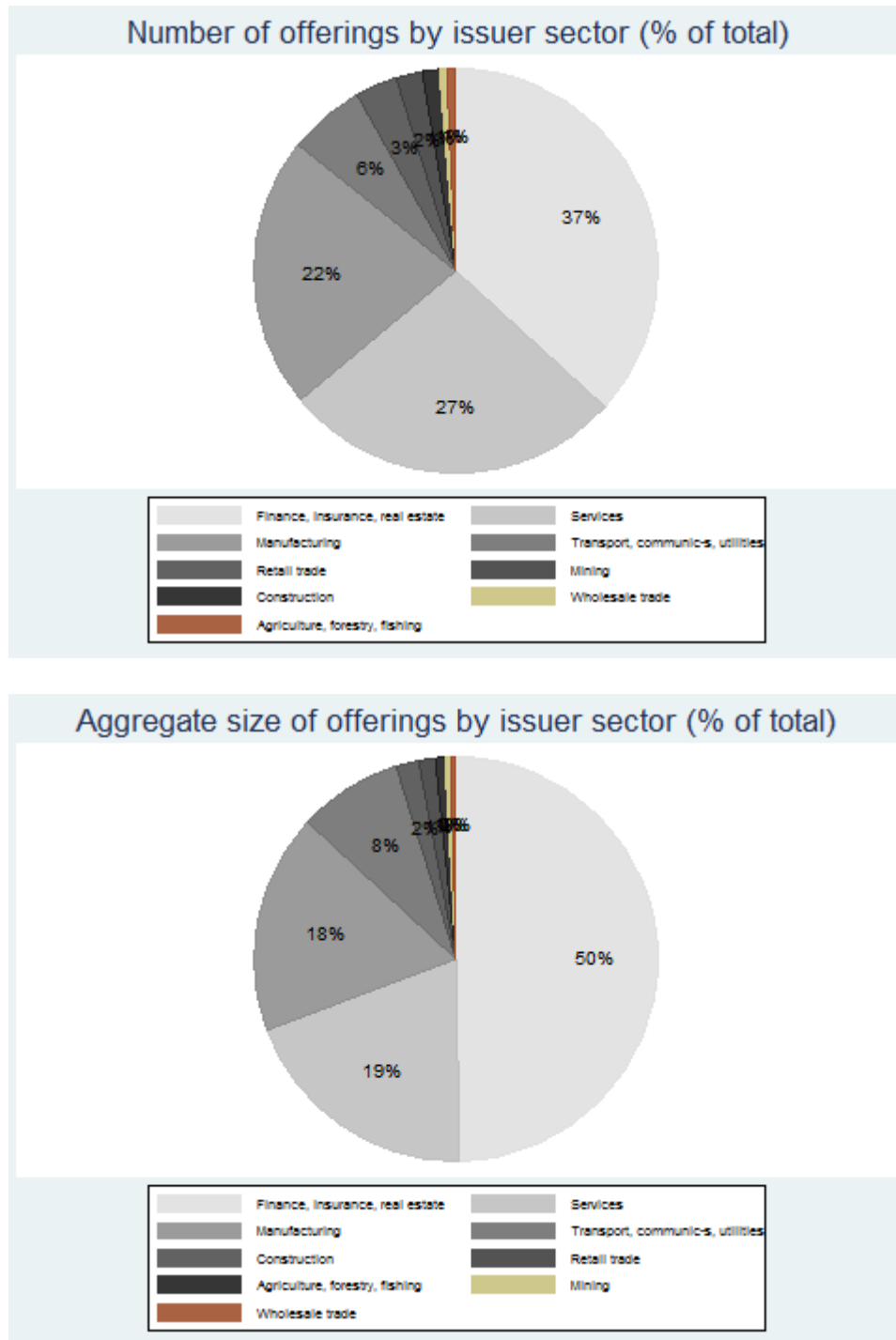


<b>Panel B. Qualified offering statements</b>	All	Tier 1	Tier 2	Diff.
Total assets, in mln (median)	\$0.2	\$0.1	\$0.2	\$0.1
Total assets, in mln (average)	\$78.7	\$104.7	\$61.9	-\$42.7
Total revenues, in mln (median)	\$0.0	\$0.0	\$0.0	\$0.0
Total revenues, in mln (average)	\$0.4	\$0.0	\$0.5	\$0.5
Net income, in mln (median)	\$0.0	\$0.0	-\$0.04	-\$0.04 *
Net income, in mln (average)	\$0.2	\$0.6	\$0.0	-\$0.6
Cash and cash equivalents, in mln (median)	\$0.0	\$0.0	\$0.0	\$0.0
Cash and cash equivalents, in mln (average)	\$3.1	\$5.7	\$1.3	-\$4.4
PP&E, in mln (median)	\$0.0	\$0.0	\$0.0	\$0.0
PP&E, in mln (average)	\$1.1	\$0.2	\$1.6	\$1.4
Long-term debt, in mln (median)	\$0.0	\$0.0	\$0.0	\$0.0
Long-term debt, in mln (average)	\$6.0	\$6.3	\$5.9	-\$0.5
Number of employees (median)	3	4	2	-2 *
Number of employees (average)	29	36	23	-13
Prior unregistered offerings	73%	55%	85%	31% *
Assets up to \$1 mln	67%	65%	69%	4%
Assets up to \$100 mln	87%	74%	96%	22% *
Zero revenues	62%	64%	61%	-3%
Revenues up to \$1 mln	93%	100%	89%	-11% *
Positive net income	27%	48%	13%	-36% *

Systematic patterns emerge in the distribution of issuer industries. As can be seen from Fig. 3a-d and Table 5, the finance, insurance, and real estate sector accounted for the largest number of offerings and total amount offered across issuers. Approximately 37% of filings based on number and 50% of the aggregate offer size were from this sector. Consistent with it, the list of top 5 two-digit SIC industries included real estate, holding and other investment offices, and depository and non-depository credit institutions. Business services were also among top 5 industries.<sup>45</sup>

<sup>45</sup> Several caveats are warranted. SIC two-digit industry definitions may be noisy. (NAICS data by issuer is not available in Part I of Form 1-A.) Primary SIC codes may not fully capture the business of an issuer diversified across multiple product lines. In addition, the business of an early-stage issuer may change over time as the issuer's business matures or pivots in response to a failed project.

**Fig. 3a-d. Issuer distribution by broad industry sector based on the number and aggregate size of offerings<sup>46</sup>**



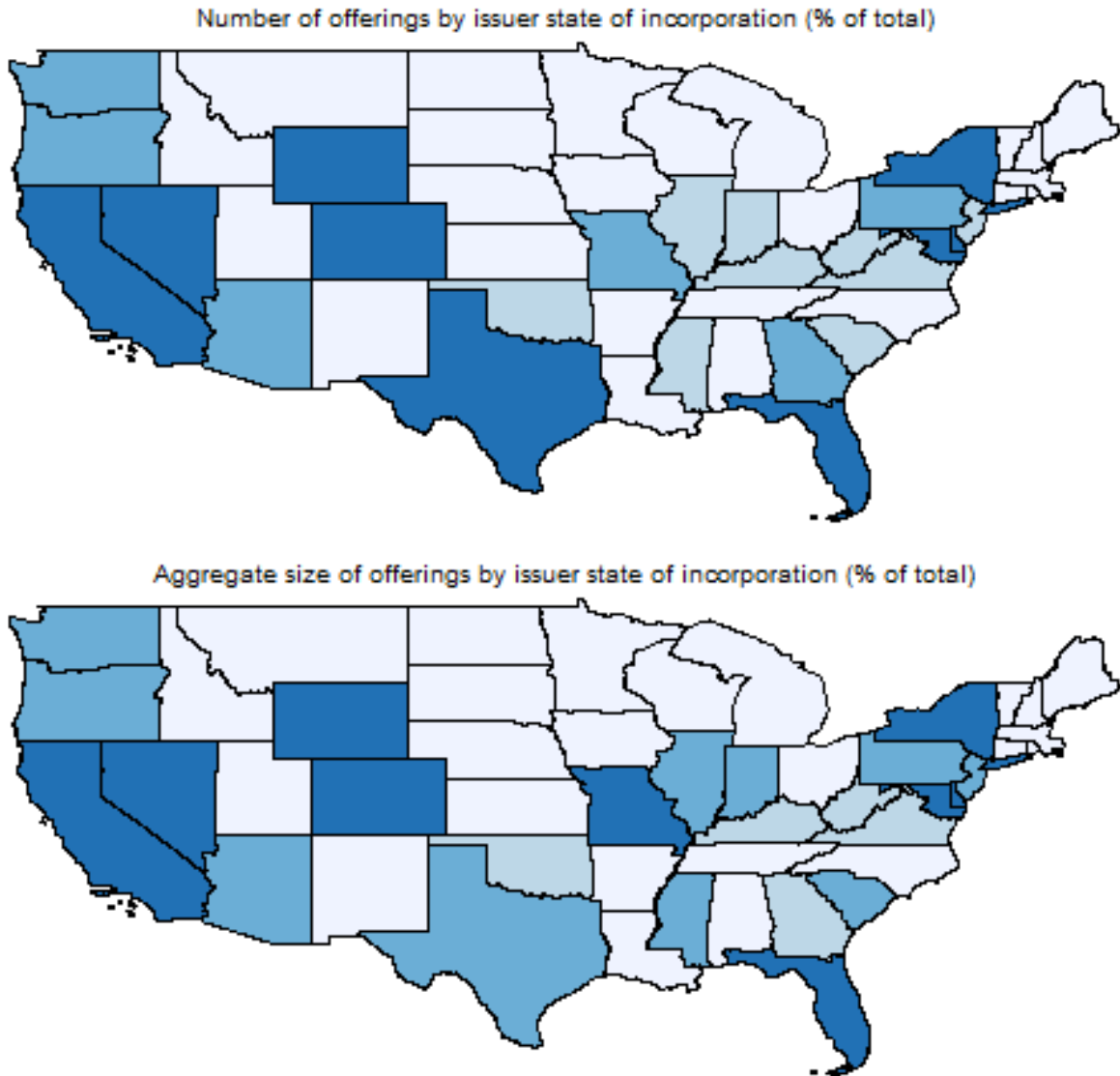
<sup>46</sup> See note 29 above.

**Table 5. Issuer industry distribution based on the number and aggregate size of offerings**

<b>Top two-digit SIC industries</b>			
Rank	Industry	Number of offerings (%)	Number of offerings
1	Business services	15%	22
2	Real estate	13%	19
3	Non-depository credit institutions	8%	12
4	Holding and other investment offices	8%	12
5	Depository institutions	7%	10
Rank	Industry	Number of qualified offerings (%)	Number of qualified offerings
1	Business services	17%	14
2-4	Holding and other investment offices	12%	10
2-4	Depository institutions	12%	10
2-4	Real estate	12%	10
5	Non-depository credit institutions	7%	6
Rank	Industry	Aggregate size of offerings (%)	Aggregate size of offerings (\$ mln)
1	Holding and other investment offices	20%	\$515
2	Real estate	14%	\$377
3	Non-depository credit institutions	10%	\$253
4	Business services	9%	\$238
5	Communications	6%	\$161
Rank	Industry	Aggregate size of qualified offerings (%)	Aggregate size of qualified offerings (\$ mln)
1	Holding and other investment offices	30%	\$445
2	Real estate	10%	\$148
3	Depository institutions	10%	\$146
4	Business services	8%	\$119
5	Non-depository credit institutions	8%	\$113

As can be seen from Fig. 4a-d, Fig. 5a-d, and Table 6, the geographic distribution of issuers is generally consistent with the patterns of business activity in other market segments. Over half of all offerings were by issuers incorporated in Delaware or Nevada. These jurisdictions of incorporation are also common among issuers in registered offerings.

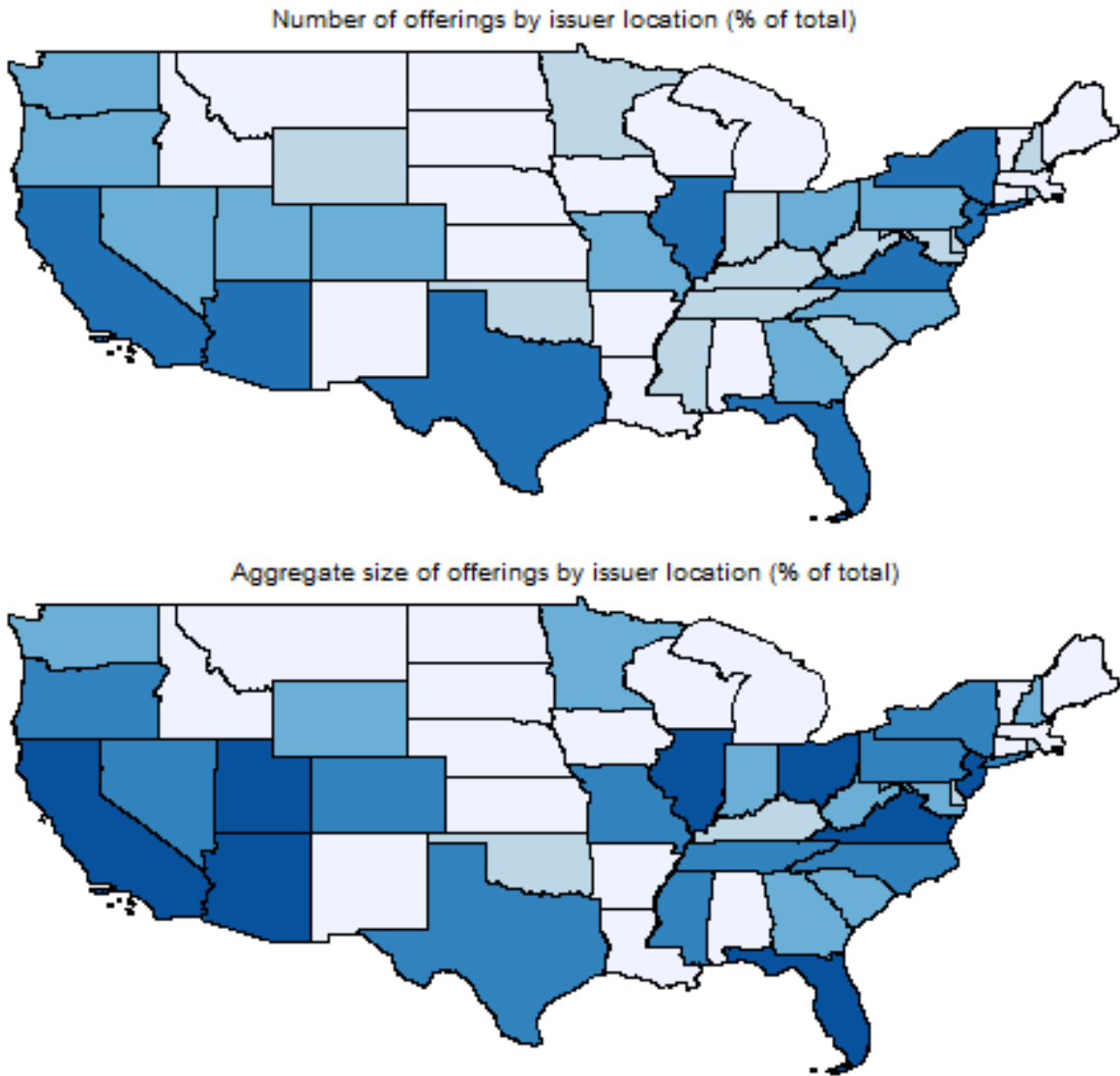
**Fig. 4a-d. Issuer jurisdiction of incorporation based on the number and aggregate size of offerings<sup>47</sup>**



<sup>47</sup> See Appendix A for sample and variable definitions. Maps depict U.S. 48 states (Canada, Alaska, and Hawaii are excluded from the map above). Darker colors indicate greater concentration of issuers.

The most offerings were by issuers with a business location in California, as can be seen from Fig. 5a-d below. Other common issuer locations were DC, Virginia, Florida, and Texas, consistent with a relatively high number of businesses, including small businesses and startups, in those locations.

**Fig. 5a-d. Issuer location based on the number and aggregate size of offerings<sup>48</sup>**



<sup>48</sup> See note 47.

**Table 6. Geographic distribution of issuers**

<b>Top issuer jurisdictions</b>			
Rank	Issuer jurisdiction	Number of offerings (%)	Number of offerings
1	DE	40%	59
2	NV	12%	18
3	WY	7%	10
Rank	Issuer jurisdiction	Number of qualified offerings (%)	Number of qualified offerings
1	DE	47%	38
2	NV	10%	8
3	WY	7%	6
Rank	Issuer jurisdiction	Aggregate size of offerings (%)	Aggregate size of offerings (\$ mln)
1	DE	48%	\$1,251
2	NV	11%	\$278
3	MD	9%	\$250
Rank	Issuer jurisdiction	Aggregate size of qualified offerings (%)	Aggregate size of qualified offerings (\$ mln)
1	DE	65%	\$946
2	MD	12%	\$170
3	NV	5%	\$70
<b>Top issuer locations</b>			
Rank	Issuer location	Number of offerings (%)	Number of offerings
1	CA	36	24%
2	FL	14	10%
3	TX	10	7%
Rank	Issuer location	Number of qualified offerings (%)	Number of qualified offerings
1	CA	21%	17
2	DC	9%	7
3	FL	9%	7
Rank	Issuer location	Aggregate size of offerings (%)	Aggregate size of offerings (\$ mln)
1	CA	20%	\$538
2	DC	11%	\$288
3	FL	10%	\$266
Rank	Issuer location	Aggregate size of qualified offerings (%)	Aggregate size of qualified offerings (\$ mln)
1	DC	18%	\$262
2	CA	15%	\$215
3	VA	10%	\$140

### 3. Discussion and areas for future consideration

Below are several factors that are expected to be of importance as Regulation A+ continues to develop. Some of these factors, due to their nature, are scarcely represented in the data available to date. Others are likely to evolve over time as the Regulation A+ market matures, so information available to date may not be fully representative of the future trends in these market practices.

#### 3.1. Amounts raised

To date, there have been too few reports of offering proceeds to conduct a systematic evaluation of offering success rates. Evidence on the amounts raised reported during the sample period is summarized in Appendix B, with the estimated total of approximately \$190 million reported to have been raised during the sample period. This figure likely underestimates the amounts sold during the sample period.<sup>49</sup>

As the initial Regulation A+ issuers gauge their ability to obtain financing in this market and consistently complete capital raises, their track record may create positive feedback effects and attract prospective issuers and intermediaries.

Given the limited amount of time since the amendments became effective, only a subset of Regulation A+ offerings that have been qualified have data on the amounts sold. Thus, for many of the qualified offerings in the sample, offer amounts sought<sup>50</sup> may differ from the actual amounts that would be raised in the future, for example, due to changes in issuer financing needs or investor demand. Since growth opportunities are not easily measured with the available data, to the extent that issuer size is predictive of deal size, the existing issuer size distribution would be consistent with low median amounts raised and a small fraction of issuers completing large offerings.

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<sup>49</sup> Many of the offerings were qualified in the second part of the sample period and may be ongoing, thus data on such offerings is incomplete. Some issuers that have completed offerings during the sample period might report proceeds at a later date (*e.g.*, due to permissible reporting time frames for Form 1-Z or fiscal year-end of Form 1-K) while other issuers that reported proceeds from an offering in progress during the sample period may report additional proceeds at a later date. Information from Forms 1-Z and 1-K was supplemented with the manual review of semi-annual reports on Form 1-SA, available current reports on Form 1-U, and Offering Circular Supplements filed during the sample period. However, data on amounts raised may remain incomplete and discrepancies in classification may arise.

<sup>50</sup> Evidence on maximum amounts sought disclosed in the offering statement may not be directly representative of issuers' financing needs, and issuers may differ in how they select the offer amount sought (*e.g.*, the exact amount they need to raise; the highest amount they may need, to preserve flexibility; or an amount that is below the anticipated financing needs that is likely to be fully subscribed in the presence of uncertainty about investor demand).

Based on the data available so far, there have been several examples of issuers that successfully raised a large fraction of the amount sought. Several issuers reporting proceeds were engaged in real estate “crowdfunding”. Some issuers undertook a Regulation A offering as part of financing a merger transaction.

### 3.2. Intermediary participation in primary offerings

Unlike securities-based crowdfunding offerings,<sup>51</sup> Regulation A+ offerings are not required to be conducted via a registered intermediary. Issuers that elect to engage an intermediary may retain a registered broker-dealer to underwrite the offering of their securities or otherwise effect or facilitate the primary offering of Regulation A+ securities. Issuers also may retain entities that are not registered broker-dealers to assist with a limited range of offering-related activities that do not require broker-dealer registration.<sup>52</sup>

To date, the majority of offerings did not report participation of intermediaries of any type (registered or otherwise). Based on Table 2, underwriters were involved in approximately 18% of all offerings and 10% of offerings that have been qualified. Tier 2 offerings were more likely to involve underwriters (however, the effect is only statistically significant within the subset of qualified offerings). Based on those offering statements that disclosed underwriter names, several of the underwriters were associated with multiple offerings. While underwriter involvement is common in registered equity and debt offerings of larger issuers, it is less common among smaller, OTC issuers. Thus, given the smaller size of issuers undertaking Regulation A+ offerings, it is not fully surprising.

It is unclear to what extent limited underwriter involvement was associated with small offer sizes versus other factors, such as issuer characteristics that may affect the attractiveness of underwriting such offerings, issuer concern about the cost of an underwritten offering and thus, unwillingness to engage an underwriter, or other reasons for electing a self-underwritten offering.

With only a few underwriters participating so far, it remains to be seen whether underwriters expand their presence in the Regulation A+ market. The entry of underwriters into the Regulation A+ market segment and the development of underwriter reputation for credibly

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<sup>51</sup> Title III of the JOBS Act added new Section 4(a)(6) to the Securities Act of 1933, which provides an exemption from the registration requirements of Securities Act Section 5 for certain securities-based crowdfunding transactions. The Commission rules for offerings under Section 4(a)(6) became effective on May 16, 2016 (January 29, 2016 for funding portal registration). Rule 100(a)(3) of Regulation Crowdfunding requires offerings to be conducted via registered broker-dealers or funding portals. *See Crowdfunding*, SEC Release No. 33-9974 (October 30, 2015) [80 FR 71387 (November 16, 2015)], available at <http://www.sec.gov/rules/final/2015/33-9974.pdf> (“Crowdfunding Adopting Release”); 17 CFR 227.100 *et seq.*

<sup>52</sup> See, e.g., Guide to Broker-Dealer Registration, available at <http://www.sec.gov/divisions/marketreg/bdguide.htm>.



signaling issuer quality to the market, as well as the extent of market concentration and underwriter fee models that emerge may be important for future capital raising by Regulation A+ issuers. Underwriter reputation is particularly relevant when small, startup issuers are involved.

Regulation A+ offerings may also involve other intermediaries or third parties,<sup>53</sup> such as registered broker-dealers, registered investment advisors, finders, or promoters. Intermediaries of any kind were reported to be used in approximately 38% of all offerings and 36% of qualified offerings. The reported rate of intermediary use was significantly higher for Tier 2 offerings, consistent with the higher incidence of nationwide solicitation, thus, potentially higher costs of finding potential investors, and with the larger offer amounts in Tier 2 offerings.

Limited intermediary participation might pose the greatest hurdles to capital raising for small first-time issuers that are relatively less well known to prospective investors. However, it seems likely that the entry of intermediaries into the Regulation A+ market is determined simultaneously with issuer demand for intermediary services, types of issuers in this market, investor demand for Regulation A+ offerings, and trends in offering activity. Intermediaries may be more likely to be drawn to larger offerings that offer potential for larger total fees in dollar terms (assuming the presence of a fixed cost associated with each offering) and to reputed, profitable issuers (assuming that such issuers are less likely to fail, thus, less likely to decrease the intermediary's reputation). However, the attractiveness of the Regulation A+ market to such issuers may itself depend on the availability of intermediary services that can add value and credibly signal issuer quality, particularly, in the case of issuers engaging in a public offering of securities for the first time.

Finally, several websites<sup>54</sup> that aggregate information about Regulation A+ offerings have emerged so far. Growth in online platforms is a trend to watch for as the Regulation A+ market continues to develop.

### **3.3. Secondary market liquidity**

Secondary market liquidity has been cited as an important factor affecting the future development of the Regulation A+ market.<sup>55</sup> Most offering statements contain cautionary

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<sup>53</sup> The term is being used in a broad sense and not in reference to registered intermediaries, as in Regulation Crowdfunding. Regulation A+ offerings are not required to be offered via registered intermediaries.

<sup>54</sup> Unlike Title III offerings, Regulation A+ offerings are not required to be conducted through online platforms. The Title III exemption from broker-dealer registration for funding portals does not apply to Regulation A+ offerings. While some Regulation A+ issuers engage online platforms in some capacity, the types of functions that may be performed in the offering process by a platform or another third party that is not a registered broker-dealer may be limited.

language regarding a lack of a public market for Regulation A+ securities of the issuer. As is shown in greater detail in Appendix C.1, the majority of issuers in qualified Regulation A+ offerings are not quoted on the over-the-counter market. Some issuers may have only a certain class of securities quoted over the counter. Looking ahead, some issuers, particularly, Tier 2 issuers, may be eligible for secondary market trading in the higher tiers of the OTC market, given the Tier 2 ongoing reporting regime.<sup>56</sup> In 2015 rule releases and compliance guides, OTC Markets outlined the criteria and process for Tier 2 issuers seeking OTCQX<sup>57</sup> and OTCQB<sup>58</sup> quotation.

Federal securities laws do not impose trading restrictions on Regulation A+ securities.<sup>59</sup> Issuers may elect to impose trading restrictions (*e.g.*, to stabilize the investor base or to avoid triggering 12(g) thresholds<sup>60</sup>). Even in the absence of trading restrictions, for many issuers there may not be sufficient broker-dealer interest in quoting prices on the OTC market. Investors may therefore experience limited or no secondary market liquidity, which in turn may cause investors to require a premium on their return on investment. Some issuers may offer early redemption opportunities to mitigate the adverse effects of illiquidity on investors seeking exit.

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<sup>55</sup> See, *e.g.*, “Reg A+ and Equity Crowdfunding: Getting Through the Growing Pains of a New Era in Raising Capital”, May 26, 2016, [www.equities.com/news/reg-a-and-equity-crowdfunding-getting-through-the-growing-pains-of-a-new-era-in-raising-capital](http://www.equities.com/news/reg-a-and-equity-crowdfunding-getting-through-the-growing-pains-of-a-new-era-in-raising-capital); <http://media.straffordpub.com/products/reg-a-securities-offerings-and-fast-act-navigating-new-rules-and-leveraging-capital-raising-opportunities-2016-03-02/presentation.pdf>.

<sup>56</sup> Commission rules require Tier 2 issuers to file certain current reports and annual and semi-annual reports but do not require issuers to file quarterly reports. Tier 2 issuers seeking to meet the reporting requirements of a higher OTC market tier may elect to provide quarterly reports and other disclosures by filing such reports on Form 1-U.

<sup>57</sup> See <http://www.otcm Markets.com/content/doc/regulation-a-on-ramp-guide-to-otcqX.pdf>.

<sup>58</sup> See <http://www.otcm Markets.com/content/doc/regulation-a-on-ramp-guide-to-otcqb.pdf>.

<sup>59</sup> Note that state securities law registration and qualification requirements are only preempted with respect to primary offerings of securities by the issuer or secondary offerings by selling securityholders that are qualified pursuant to Regulation A and offered or sold to qualified purchasers pursuant to a Tier 2 offering. Resales of securities purchased in a Tier 2 offering that do not meet the condition of one of the exemptions from state registration must be registered with state securities regulators. See Compliance and Disclosure Interpretations (Question 182.10), June 23, 2015, <https://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm>.

<sup>60</sup> Triggering Section 12(g) thresholds is only a consideration for larger issuers.

### 3.4. Other types of exempt offerings

Regulation A+ represents only one out of many capital raising methods, and only one type of offerings of securities that are exempt from registration under the Securities Act.<sup>61</sup> It is therefore possible that issuers utilize Regulation A+ in conjunction with other exempt offering activity.

The majority, 61% of issuers (73% of issuers in qualified offerings) report having recently undertaken unregistered offerings of securities (see Table 4). Looking at the types of recent unregistered offerings reported by Regulation A issuers, among issuers reporting prior unregistered offering activity, most have conducted placements in reliance on Section 4(a)(2) (statutory exemption from the registration requirements of Section 5 of the Securities Act of 1933 for “transactions by an issuer not involving any public offering”) or Regulation D (a non-exclusive safe harbor that defines sufficient conditions for an offering to be considered a private offering, *e.g.*, under Rules 504, 505, 506(b) or 506(c) of Regulation D<sup>62</sup>). Some have previously conducted Regulation A offerings or offerings under Rule 701.<sup>63</sup>

Past unregistered offering activity is more common among issuers in Tier 2 offerings, with a statistically significant 31% to 47% difference in the rate of incidence between Tier 2 and Tier 1 offerings. This is generally consistent with Tier 2 issuers having larger financing needs, which might be met with multiple financing methods. However, for issuers that have taken part in prior unregistered offerings, it is not possible to infer why they are pursuing a Regulation A+ offering at this time.

One of the key questions is where Regulation A+ will emerge on the continuum of capital raising methods available to small issuers (*i.e.*, where Regulation A+ fits in the pecking order of unregistered offering methods for such issuers). Besides founder equity and bank financing, small issuers potentially have a range of options for accessing capital markets, such as private placements in reliance on Section 4(a)(2), including the Regulation D safe harbor; VC funding; federal and state crowdfunding; and small registered public offerings (*e.g.*, on the OTC market or NASDAQ Capital Market). Particularly for first-time filers, it remains to be seen to what extent such issuers will rely on other exempt offerings over the long run and what part Regulation A+ offerings will play in their overall capital raising strategy.

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<sup>61</sup> See Scott Bauguess, Rachita Gullapalli, and Vladimir Ivanov, Capital Raising in the U.S.: An Analysis of the Market for Unregistered Securities Offerings, 2009–2014 (October 2015), available at <http://www.sec.gov/dera/staff-papers/white-papers/unregistered-offering10-2015.pdf>.

<sup>62</sup> *Id.*

<sup>63</sup> Rule 701, originally adopted in 1988 and subsequently amended, offers an exemption from registration under the Securities Act for securities issued by non-reporting companies pursuant to compensatory arrangements certain. See Rule 701 - Exempt Offerings Pursuant to Compensatory Arrangements, SEC Rel. No. 33-7645 (February 25, 1999) [64 FR 11095], available at <http://www.sec.gov/rules/final/33-7645.htm>, as corrected by SEC Rel. No. 33-7645A [64 FR 61497 (November 12, 1999)].

### **3.5. Types of issuers**

The types of issuers seeking and raising funding using this method remain an important open question. Regulation A+ generally preserved the issuer eligibility criteria of the prior Regulation A rules.

During the sample period, there was considerable heterogeneity in the types and business models of issuers. As was noted above, financial issuers were the most represented industry sector. Regulation A+ generally preserved the issuer eligibility criteria of the prior Regulation A rules. Several issuers in the real estate sector, including real estate “crowdfunding platforms” (in a colloquial sense and not in the strict sense of Regulation Crowdfunding) have engaged in Regulation A+ offerings. It remains to be seen how the Regulation A investor base reacts to the risk factors and valuation challenges associated with such securities and whether additional unregistered online REITs enter the Regulation A market. Separately, banks and bank holding companies have made Regulation A+ offerings. The majority of banking institutions are small and are not Exchange Act reporting companies, thus, are potentially eligible for Regulation A+. Given local recognition, community bank issuers may be well positioned to attract individual investors via a local or regional Regulation A offering. The high degree of regulatory oversight and disclosure of information about bank operations may mitigate certain information risks of unregistered offerings, particularly, Tier 1 offerings that do not impose an ongoing reporting obligation. In time, it may be possible to see whether bank issuers repeatedly access the Regulation A market and whether more bank issuers use this financing method in the future. Some of the issuers undertook a Regulation A offering as part of financing a merger transaction. It would also be interesting to see if consumer-facing startups and ventures with an active social media presence find Regulation A+ offerings attractive for raising capital.

### **3.6. Future outcomes of Regulation A+ issuers**

One of the overarching questions of economic relevance is how Regulation A+ issuers will fare over the long term and how their businesses outcomes will compare to the rates of success, growth and operating performance of issuers in small registered offerings and issuers that raise capital from VCs and in private placements (through Regulation D or other methods).

Conceptually, the availability of additional financing could improve access to capital and capital formation among small issuers, result in more efficient allocation of investor capital, and facilitate growth. Depending on the entry of new issuers, the availability of an alternative capital raising method may increase competition among providers of capital and potentially lower financing costs (by ‘disrupting’ the traditional menu of financing options for small issuers).

To the extent that issuers in this market share similarities with other startups and small issuers, it is likely that issuers will have relatively high failure rates. For issuers that successfully execute their business plans and begin to generate revenue, it would be useful to examine the rates of survival and exit and the occurrence of any follow-on corporate restructuring. Will they enter

the OTC market, register under Section 12(g), list on a national exchange or its small-cap tier, or be acquired by another company? What avenues will Regulation A+ issuers explore for raising additional financing (*e.g.*, private placements, loans, follow-on Regulation A+ offerings). Future research could follow issuers that conduct repeated raises in reliance on Regulation A+. While for some issuers the Regulation A+ offering is only a part of the overall financing strategy, for others it may be a standalone capital raise for a specific, time-limited purpose, such as financing a merger.

Additionally, the short observation period and small sample, coupled with the latency of investor protection concerns and the inherent difficulty of isolating in the data the instances of malfeasance from the generally high business risk of small and startup businesses, make it challenging to systematically quantify potential investor protection concerns at this point. However, as in any market in which small issuers are raising financing and informational asymmetries are present, the extent to which investors are concerned about potential fraud can affect the ability to raise capital.

### **Risk factors**

Like other unregistered offerings by small, closely held issuers, offerings by Regulation A+ issuers may pose risks that may affect investor willingness to participate in an offering or the terms of an offering. The rules require all issuers to disclose material risk factors in the offering circular at the time of the offering, and for Tier 2 issuers, also in ongoing reports.

The risk factors associated with an investment in Regulation A+ securities may be grouped into the following broad categories:

- market-wide risks associated with aggregate economic and market conditions, which Regulation A+ issuers share with other U.S. issuers;
- risks associated with small companies; for instance, financing constraints may increase the risk exposure of small firms during downturns, while a low market share may reduce the issuer's ability to pass through cost increases to customers;
- other risk factors, such as risks that are specific to the sector or industry (*e.g.*, real estate, banking, or retail trade) and company-specific risks; the degree of company-specific risk is likely to vary depending on whether the issuer is a development-stage start-up versus a more established company, the variability in its operating and non-operating cash flows, the specific set of investment opportunities, the company's leverage, regulatory risks, the presence of competitors, management and governance structure, and the extent of information asymmetry.

The above categories of risks are present, to some extent, with all types of issuers. The discussion below illustrates some of these risks in the context of Regulation A+ issuers. It is worth noting that similar scenarios often arise with other small, early-stage or closely-held companies and are therefore not unique to Regulation A+ issuers.

Similar to other small issuers, Regulation A+ issuers are likely to be bound by significant financing constraints. As many issuers in the sample do not generate sufficient internal cash flow and have large accumulated deficits, their ability to continue as a going concern can be highly dependent on the continued ability to raise new financing, either via a Regulation A offering or another financing method. Due to limited internal cash flow and limited assets, issuers in the sample may be constrained from obtaining bank or other loan financing or obtaining such financing on favorable terms.

In addition, a typical Regulation A+ issuer in the sample shares management and governance risks with other closely held firms. Management and insiders may retain the majority of control rights, which could cause incentive conflicts with minority outside investors. Such conflicts of interest may involve appointments and turnover of the management and directors, related party transactions, executive and director compensation, additional issuance of securities, financing and payout policy, and the types of investments pursued. Thus, even if a company becomes profitable, incentive conflicts may erode the return realized by outside investors. Unlike VCs or angels, small investors would typically not be in a position to negotiate control rights and downside protection options. Similar to investors holding small stakes in small public companies, small Regulation A+ investors<sup>64</sup> would typically not be in a position to overcome collective action problems in the monitoring of management.

Compared to small issuers that are reporting companies, some Regulation A+ issuers may be characterized by added information asymmetry due to the differences in reporting requirements. While Tier 1 issuers are subject to offering statement disclosure requirements, they are not subject to ongoing reporting obligations. Tier 2 issuers are subject both to offering statement disclosure requirements and to ongoing reporting requirements (unless they are eligible to and elect to exit ongoing reporting), but Tier 2 ongoing reporting requirements are generally less extensive than those imposed on Exchange Act reporting companies. Small investors may be less well equipped to overcome informational asymmetries associated with small issuers.<sup>65</sup> However, due to the presence of more extensive disclosure requirements in Regulation A+ (particularly, for Tier 2 issuers), Regulation A+ issuers may pose less information asymmetry than other small issuers that are not reporting companies and that have raised financing in reliance on other exemptions.

Lastly, as discussed elsewhere in this section, Regulation A+ investors may lack exit options for their investment due to a lack of a secondary market.

While the described types of risk factors should largely be anticipated by investors, and are evident from offering circular disclosures, it remains to be seen to what extent they correlate with

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<sup>64</sup> Investors in Tier 1 offerings and accredited investors in Tier 2 offerings are not subject to investment limitations, thus some investors may accrue large percentage stakes in Regulation A+ issuers.

<sup>65</sup> Information intermediaries may facilitate the evaluation and analysis of information contained in the disclosures of Regulation +A issuers.

future volatility in issuer cash flows and other operating performance outcomes relative to similar-sized issuers registered under Section 12(g) or issuers seeking financing through a private placement (more limited data<sup>66</sup> is available about such issuers, making it impossible to comprehensively compare their operating performance and other outcomes to those of Regulation A+ issuers), and to what extent they affect the ability of issuers to raise the amount sought.

#### **4. Conclusion**

Overall, preliminary Regulation A+ evidence indicates that there has been an increase in Regulation A offering activity in the first 16 months since effectiveness; a wide range of issuers has initiated offerings; and issuers participating in the offerings have generally sought to utilize the new provisions afforded by the 2015 amendments. Crucial questions remain regarding offering outcomes and future trends in intermediary involvement and secondary market liquidity as the Regulation A+ market continues to develop.

Like other small-scale analyses, the findings of this analysis of the Regulation A+ market are qualified by the sample size and the relatively short observation period, thus, it is unclear to what extent it can be extrapolated to future years or periods with different aggregate conditions.

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<sup>66</sup> Some academic studies have utilized data from Sageworks, Inc. on private firms.

## Appendix A. Sample and variable definitions

### 1. Sample

The sample and data rely on public EDGAR filings made under amended Regulation A between June 19, 2015 and October 31, 2016. Due to data limitations the sample does not include prospective issuers that submit draft offering statements for non-public review or prospective issuers that test the waters unless such issuers publicly file an offering statement.

Data was extracted from Part I of Form 1-A filings using a computer script. Offer amounts extracted using a script were then verified against the information reported in Part II of Form 1-A (the offering circular). The remaining data was generally used as reported in Part I. Some data discrepancies may remain. Additional information was manually gathered from filings and other sources as described below.

Data was gathered from the initial Form 1-A filing or the most recent pre-qualification amendment on Form 1-A for a given issuer and file number. Issuers are identified based on CIK. Offerings are identified based on file number. Some issuers sought qualification of multiple offerings. Most analyses are performed at the offering level. Where the analysis is performed at the issuer level, it uses the latest information available for that issuer. The sample includes offerings that were initially filed, although not qualified, prior to the sample period and subsequently refiled as a pre-qualification amendment during the sample period as they may result in capital raising under Regulation A+. The sample excludes withdrawn offerings since they will not result in capital raising under Regulation A+. <sup>67</sup> The main sample excludes post-qualification amendments. <sup>68</sup>

The described criteria yield the main sample of 147 offerings, as shown below. There were 182 file numbers associated with Forms 1-A, 1-A/A, and 1-A POS filed during the sample period. Of those, 29 offerings were withdrawn during the sample period and an additional 3 offerings were classified as potential duplicates and consolidated with prior offerings by the same issuer, leaving 150 offerings. Of the remainder, 3 offerings were initially qualified prior to the sample period and involved only post-qualification amendments during the sample period, leaving the main sample of 147 offerings, including 81 that were qualified during the sample period.

Supplementary analysis in Appendix D uses alternative sample definitions: Panels A and B add post-qualification amendments to the main sample; Panels C and D focus on the subset of offerings that were initially filed on Form 1-A during the sample period.

As a general caveat, the analysis was conducted as of the specified end of the sample period. Offering statements may be amended or withdrawn at a later date.

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<sup>67</sup> Withdrawn offerings were identified from Form 1-A-W filings. Most such filings cited technical issues or duplicate filings, while others did not provide a reason for withdrawal. A small number of issuers requested withdrawal after qualification. Some Form 1-A-W filings pertained to a withdrawal of a request for acceleration rather than of the offering itself, in which case the offering was retained in the sample.

<sup>68</sup> This results in the exclusion of offerings that had been initially qualified prior to the sample period and that only had post-qualification amendments during the sample period. This also results in the use of the data from the latest pre-qualification amendment, rather than from the latest amendment for offerings with post-qualification amendments.



## 2. Variable definitions

The variables are described below. See Appendix A.1 for details of sample construction. The data are obtained from publicly filed Form 1-A offering statements.

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Offer amount	Offer size (maximum aggregate offer price)
Number of offerings	Total number of offerings, identified by file number
Number of issuers	Total number of unique issuers, identified by CIK
Offer amount per issuer	Aggregate offer price across all offerings undertaken by an issuer; almost all have only filed an offering statement for one offering.
Security type: Equity	Indicator equal to 1 if security type is Equity, 0 otherwise
Security type: Debt	Indicator equal to 1 if security type is Debt, 0 otherwise
Security type: Other	Indicator equal to 1 if security type is Other, 0 otherwise
Testing-the-waters	Indicator equal to 1 if the issuer has used solicitation of interest communications in connection with the offering, 0 otherwise
Best efforts offerings	Indicator equal to 1 if the offering is being conducted on a best efforts basis
Underwriter involved	Indicator equal to 1 if the offering statement lists an underwriter other than the issuer or if the offering statement lists a positive underwriting fee
Any intermediary involved	Indicator equal to 1 if the offering statement lists an underwriter, sales agent, finder or promoter other than the issuer itself or if the offering statement lists a positive underwriting fee, sales fee or commission, finders fee, or promoter fee
Continuous offering	Indicator equal to 1 if the offering is being made on a delayed or continuous basis pursuant to Rule 251(d)(3), 0 otherwise
Audited financial statements provided	Indicator equal to 1 if audited financial statements are provided, 0 otherwise
Offering includes sales by existing securityholders	Indicator equal to 1 if the amount being offered includes prospective sales by existing securityholders, 0 otherwise
Offering includes sales by affiliate securityholders	Indicator equal to 1 if the amount being offering includes prospective sales by affiliates of the issuer

Number of states of solicitation	Number of jurisdictions in which the issuer intends to offer the securities
Total assets, in mln	Total assets, in \$ million
Total revenues, in mln	Total revenues, in \$ million
Net income, in mln	Net income, in \$ million
Cash and cash equivalents, in mln	Cash and cash equivalents, in \$ million
PP&E, in mln	Property, plants, and equipment, in \$ million
Long-term debt, in mln	Long-term debt, in \$ million
Number of employees	Number of full-time and part-time employees
Prior unregistered offerings	Indicator equal to 1 if the issuer reports having conducted unregistered offerings in the prior 12 months, 0 otherwise
Assets up to \$1 mln	Indicator equal to 1 if the issuer's total assets do not exceed \$1 million, 0 otherwise; missing values ignored
Assets up to \$100 mln	Indicator equal to 1 if the issuer's total assets do not exceed \$100 million, 0 otherwise; missing values ignored
Zero revenues	Indicator equal to 1 if the issuer's total revenues are zero, 0 otherwise; missing values ignored; it is possible that some missing values should be 0
Revenues up to \$1 mln	Indicator equal to 1 if the issuer's total revenues do not exceed \$1 million, 0 otherwise; missing values ignored
Positive net income	Indicator equal to 1 if the issuer's net income is positive, 0 otherwise; missing values ignored
Legal fees, in \$000s	Legal fees, in \$ thousands; missing values either ignored
Audit fees, in \$000s	Audit fees, in \$ thousands; missing values either ignored
Intermediary fees, in \$000s	Intermediary fees, in \$ thousands; intermediary fees are the sum of underwriter fees, sales commissions, finder's fees, and promoter's fees, if any; missing values ignored

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## **Appendix B. Information about amounts reported raised<sup>69</sup>**

The estimates are based on a review of Forms 1-Z, 1-K, 1-SA, 1-U, and other filings (e.g., Form 1-A POS and supplements to the offering circular, 253G2) pertaining to offerings qualified during the sample period.<sup>70</sup>

Where an issuer has reported information about proceeds from a completed offering or an offering in progress in multiple filings during the sample period, the latest filing as of the end of the sample period was used.

The total reported was estimated at approximately \$189.7 mln based on 20 issuers reporting positive proceeds. An additional 11 issuers reported zero proceeds as of the report date, including 4 issuers that had ended the offering for various reasons.

As discussed in Appendix A, an additional 3 issuers excluded from the main sample had withdrawn offerings after qualification without raising proceeds.

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<sup>69</sup> The final rules require issuers in Tier 1 offerings to provide information about sales and to update certain issuer information by electronically filing a Form 1-Z exit report with the Commission not later than 30 calendar days after termination or completion of an offering. The final rules require issuers in Tier 2 offerings to include in their first annual report after termination or completion of a qualified offering, or in their Form 1-Z exit report, information about sales in the terminated or completed offering. Therefore, some issuers that have completed offerings during the sample period might not have reported proceeds on Forms 1-Z or 1-K during this period. Amounts raised are estimated based on the search of available reports filed during the sample period as discussed above and likely underestimate amounts sold during the sample period due to the timing of reporting.

<sup>70</sup> Additionally, four issuers filed reports during the sample period pertaining to offerings qualified under old Regulation A, prior to the sample period, with total proceeds of approximately \$3.6mln, which are excluded from the Regulation A+ total.

## **Appendix C. Filing activity and OTC quotation of Regulation A+ issuers**

### **1. OTC quotation**

At this time, due to the small number of offerings that have been completed under amended Regulation A, it is difficult to assess whether a secondary market for trading in Regulation A securities will emerge. In the majority of qualified offerings, Form 1-A filings either do not mention a secondary market or mention that a public market does not presently exist and is unlikely to develop in the future.

In the sample of 81 qualified offerings (84 qualified offerings, including post-qualification amendments), a check of security names and CIKs against the data feed provided by OTC Markets supplemented by a manual search of filings identified 10 (13) offerings by issuers that are potentially quoted on OTC Markets. One of the issuers quoted on the OTC market is seeking NYSE exchange listing. For an additional 17 offerings, offering statements mentioned that the issuer was planning to seek OTC quotation in the future.

Two important caveats are in order: (i) although an issuer may have a class of securities quoted on the OTC market, other classes of securities, including securities issued in a Regulation A offering need not be quoted on the OTC market; (ii) among securities quoted on the OTC market, liquidity can vary significantly from issuer to issuer and is on average lower than the liquidity of securities traded on major exchanges.

Some issuers that do not have a class of securities traded in a secondary market have adopted redemption plans to enable periodic exit by investors.

### **2. Regulation A+ reporting**

In the sample of 48 qualified Tier 2 offerings, periodic reports on Forms 1-K or 1-SA were filed for 27 offerings while ongoing reports on Forms 1-K, 1-SA or 1-U were filed for 35 offerings. Some offerings have only recently been qualified.

In the sample of 33 qualified Tier 1 offerings, exit reports were filed for 8 offerings. Some offerings have only recently been qualified or may remain in progress.

### **3. Exchange Act reporting history and registration filings**

Based on the search of other EDGAR filings by Regulation A+ issuers (or their corporate predecessors identified by the same CIK) in the main sample of 147 offerings:

- Issuers in 8 offerings had previously been reporting companies and had terminated Exchange Act reporting prior to a Regulation A filing
- Issuers in 3 offerings sought registration on Form 8-A or Form 10 after a Regulation A+ filing; 1 of those issuers subsequently terminated Exchange Act reporting

## Appendix D. Alternative sample filters

Appendix D presents the evidence using alternative sample construction criteria for robustness.<sup>71</sup>

<b>Panel A: All offering statements</b>	All	Tier 1	Tier 2	Diff.
Total offer amount, in mln	\$2,733	\$711	\$2,022	
% of total offer amount	100%	26%	74%	
Number of offerings	150	74	76	
% of total number of offerings	100%	49%	51%	
Number of issuers	148	72	76	
% of total number of issuers	100%	49%	51%	
Median offer amount, in mln	\$14	\$6	\$25	\$19 *
Average offer amount, in mln	\$18	\$10	\$27	\$17 *
<b>Panel B: Qualified offering statements</b>	All	Tier 1	Tier 2	Diff.
Total offer amount, in mln	\$1,561	\$233	\$1,328	
% of total offer amount	100%	15%	85%	
Number of offerings	84	35	49	
% of total number of offerings	100%	42%	58%	
Number of issuers	82	33	49	
% of total number of issuers	100%	40%	60%	
Median offer amount, in mln	\$11	\$5	\$25	\$20 *
Average offer amount, in mln	\$19	\$7	\$27	\$20 *

<sup>71</sup> See Appendix A for sample and variable definitions.

Panels A and B add back post-qualification amendments. Some offerings have missing data on offering or issuer characteristics. The offer amount is the sum of amounts qualified in each post-qualification amendment that was classified as pertaining to a unique offering, rather than an amendment of information in connection with a prior offering. For other variables, information as reported in Part I was used.

Panels C and D exclude post-qualification amendments and offerings withdrawn after qualification and further limit the sample to offerings initially filed on or after June 19, 2015 (excluding offering statements that were initially filed but not qualified prior to June 19, 2015 and subsequently refiled as pre-qualification amendments on or after June 19, 2015).

<b>Panel C: All offering statements</b> (initially filed post-June 19, 2015)	All	Tier 1	Tier 2	Diff.
Total offer amount, in mln	\$2,574	\$642	\$1,932	
% of total offer amount	100%	25%	75%	
Number of offerings	138	63	75	
% of total number of offerings	100%	46%	54%	
Number of issuers	137	62	75	
% of total number of issuers	100%	45%	55%	
Median offer amount per issuer, in mln	\$15	\$10	\$20	\$10 *
Average offer amount per issuer, in mln	\$19	\$10	\$26	\$16 *
<b>Panel D: Qualified offering statements</b> (initially filed post-June 19, 2015)	All	Tier 1	Tier 2	Diff.
Total offer amount, in mln	\$1,434	\$194	\$1,241	
% of total offer amount	100%	13%	87%	
Number of offerings	75	27	48	
% of total number of offerings	100%	36%	64%	
Number of issuers	74	26	48	
% of total number of issuers	100%	35%	65%	
Median offer amount per issuer, in mln	\$12	\$5	\$20	\$15 *
Average offer amount per issuer, in mln	\$19	\$7	\$26	\$19 *