

# States Challenge SEC Regulation A+

September 28, 2015

Massachusetts and Montana have taken the highly unusual step of suing the SEC over a recent amendment to Regulation A under the Securities Act of 1933. The SEC adopted "Regulation A+" (as the amended regulation is commonly called) in reliance on new authority granted to it by the Jumpstart Our Business Startups Act (JOBS Act). Regulation A previously provided simplified filing procedures for offerings of not more than \$5 million of a company's securities. Regulation A+ increased this threshold in a new two-tiered structure. Now, Tier 1 issuers may offer and sell up to \$20 million of securities in a 12-month period, while Tier 2 issuers may offer and sell up to \$50 million of securities in a 12-month period. The JOBS Act also empowered the SEC to preempt state securities registration requirements for Regulation A+ offers to "qualified purchasers." In adopting Regulation A+, the SEC defined purchasers in Tier 2 Regulation A+ offerings to be "qualified purchasers" for this purpose, thus rendering state registration unnecessary for offerings to such purchasers. The states' lawsuits, which have been consolidated in the United States Court of Appeals for the District of Columbia, seek vacatur of Regulation A+, and a permanent injunction to prevent its enforcement by the SEC. They allege, among other things, that the preemption of state securities laws for Tier 2 offerings is "inconsistent with the public interest and the protection of investors" and that the SEC did not sufficiently consider such matters. They also allege that the SEC acted arbitrarily, capriciously, and in contravention of the Administrative Procedures Act. They challenge in particular the SEC's definition of "qualified purchaser," which was novel compared to the way similar terms are generally defined for securities law purposes.

## Related Practices

[Securities Litigation and Enforcement](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.