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SEC Cracks Down on Regulation A Issuers

By: [Alison Pear](#)

Regulation A "Plus" is an exemption from registration under the Securities Act of 1933 that permits certain eligible issuers to conduct public offerings of up to \$75 million in a 12-month period to accredited and unaccredited investors. Somewhere between a Regulation D private placement and a full registered offering, issuers utilizing Regulation A must, among other requirements, file with the SEC an offering statement containing a significant number of disclosures, including audited financials for "Tier 2" offerings. The SEC then "qualifies" the offering statement before the issuer can proceed to sell the subject securities to the public. Once qualified, the offering statement can be amended by:

- offering supplements, for certain immaterial changes and explicitly identified modifications (like setting a specific offering price when the qualified offering statement includes a price range); or
- by a post-qualification amendment (for "fundamental changes"), which must be re-qualified with the SEC before sales can proceed.

Offering statements being used in continuous offerings must also be amended by post-qualification amendment every 12 months to include updated financial and other information.

Regulation A "Plus," as it currently exists, evolved from a number of rule amendments starting with rules adopted on March 15, 2015 to implement the Jumpstart Our Business Startups (JOBS) Act. These amendments turned the previously seldom used Regulation A into a more viable option for microcap issuers to raise meaningful funds from accredited and unaccredited investors while engaging in general solicitations. Since 2015, Regulation A has become an increasingly popular method of offering securities without registration, and has continued to evolve through a number of regulation amendments. As its adoption and utilization continue to evolve, it appears that its next step in development may involve increased levels of enforcement.

On May 16, 2023, the SEC announced charges against 10 microcap companies for offering and selling securities in unregistered offerings that failed to comply with Regulation A. The primary focus of these orders are offerings where the issuer either **increased the number of securities being offered** or **changed the price of the securities being offered** by offering supplement, instead of post-qualification amendment. According to the SEC orders, an issuer is not permitted to use an offering circular supplement to increase the number of securities or change the fixed price of securities offered under Regulation A. Other charges included using an offering supplement to set the sales price impermissibly below the range disclosed in the qualified offering statement; conducting an at-the-market offering or impermissible "delayed" offering; and failing to comply with requirements to update offering statements

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on an annual basis for ongoing offerings. As a result, the SEC asserted that each of the microcap companies offered and sold securities in violation of the offering registration provisions.

By announcing these orders as a group, the SEC is clearly sending a message regarding when it expects to see certain information filed by post-qualification amendment, and clearly reminding Regulation A issuers that they are monitoring these matters. Issuers would be prudent to heed the warning. Below breaks down the violations of each of the 10 companies subject to charges:

Issuer	Violation
CW Petroleum Corp.	Increased the number of shares (25M to 66.7M) offered by filing offering supplement, not a post-qualification offering statement amendment.
DNA Brands Inc.	Increased the number of shares (2.5B to 3.125B) offered and changed the offering price (\$0.001 to \$0.0008) by filing offering supplement, not a post-qualification offering statement amendment.
Graystone Company Inc.	Improperly changed the offering to permit the sale of shares at three different prices. Offering concerned shares of the same class of common stock that traded on the OTC; SEC considered at-the-market offering which is not permitted under Regulation A.
Green Stream Holdings Inc.	Increased the number of shares (100M to 125M) offered and changed offering price (9 price changes decreasing price from \$0.06 to \$0.01) by filing offering supplement, not a post-qualification offering statement amendment. Offering concerned shares of the same class of common stock that traded on the OTC; because of multiple price changes, SEC considered at-the-market offering which is not permitted under Regulation A. Continuous offering where issuer failed to update its financial statements at least annually through a post-qualification amendment.
Hemp Naturals Inc.	Impermissible delayed offering because issuer did not sell securities until 47 days after qualification; under Regulation A, an issuer must commence the offering "within two calendar days of the qualification date." Changed offering price (\$0.03 to \$0.006) by filing offering supplement, not a post-qualification offering statement amendment. Continuous offering where issuer failed to update its financial statements at least annually through a post-qualification amendment.
LiveWire Ergogenics Inc.	Increased the number of shares offered and set its offering price below the qualified range by filing an offering supplement, not a post-qualification offering statement amendment; first offering supplement increased number of shares

	(200M to 363.6M) and set offering price more than 20% below range (range was \$0.01 to \$0.02 and price set at \$0.0055); second offering supplement decreased number of shares offered (363.6M to 275.8M) and decreased offering price by an additional 30% (\$0.0055 to \$0.00725).
Principal Solar Inc.	Increased the number of shares (100M to 125M) and changed offering price (\$0.10 to \$0.08) by filing offering supplement, not a post-qualification offering statement amendment. Continuous offering where issuer failed to update its financial statements at least annually through a post-qualification amendment.
SFLMaven Corp.	Increased the number of shares (2.2B to 2.75B) and changed offering price (\$0.005 to \$0.004) by filing offering supplement, not a post-qualification offering statement amendment.
The Marquie Group Inc.	Changed offering price (twice) by filing offering supplement, not a post-qualification offering statement amendment; first price change was from \$0.0075 to \$0.0035 and second price change was \$0.0035 to \$0.0007.
Verde Bio Holdings Inc.	Increased the number of shares (four times, from an original 1M to eventually 1B) by filing offering supplement, not a post-qualification offering statement amendment.

If you have any questions, please contact the author or your Buchalter relationship attorney.



Alison Pear

Senior Counsel
(503) 226-8636
apear@buchalter.com