

## STRATEGIC PERSPECTIVES— Regulation A + flies in blue sky

### Highlights

- ✓ Explains key differences in Regulation A Tier 1 and Tier 2 offerings
- ✓ Details required information on Form 1-A for both Tier 1 and Tier 2 offerings
- ✓ Explains the relationship between Regulation A+, qualified purchasers and state notice filing requirements

By Jay Fishman, J.D.

The SEC, after reviewing numerous comments from securities practitioners and regulators on its proposed Regulation A amendments, adopted the final version with an effective date of June 19, 2015.

**History.** The Regulation A amendments, also known as “Regulation A +,” come from Section 401 of the 2012 Jumpstart Our Business Startups (JOBS) Act directing the SEC to adopt rules exempting offerings of up to \$50 million annually from securities registration. Thus Congress, through the JOBS Act, started the SEC on the path to amending Regulation A into what has become Regulation A +, to help U.S. businesses raise capital in today’s global economy.

**Structure.** Regulation A + is comprised of two-tiers. Tier 1 provides for an exemption for offerings of up to \$20 million, and Tier 2 permits offerings of up to \$50 million. Tier 1 is for small, local issuers looking to raise up to \$20 million through the sale of securities in a 12-month period from investors located in one or a handful of states (i.e., a more intrastate focused offering). Tier 2 is for larger, national or global issuers looking to raise up to \$50 million through the sale of securities in a 12-month period from investors located in many states (i.e., a more interstate focused offering).

SEC [Release](#) No. 33-9741 contains over 400 pages detailing the federal requirements that Tier 1 and Tier 2 issuers must abide by in order to satisfy the requirements for an exemption under Regulation A.

**Comparison of Tier 1 and Tier 2.** For federal compliance purposes, there are some differences between Tier 1 and Tier 2, in addition to limitations on offering sizes. For example, after a Tier 1 offering’s first 12 months, affiliates (but not other selling security holders) may not sell more than \$6 million of securities over a 12-month period, and for a Tier 2 offering, no more than \$15 million of securities may be sold during a 12-month period.

With regard to investment limitations, predecessor Regulation A’s unlimited securities purchase amount for all investors remains applicable for Tier 1 offerings. An unlimited investment amount also applies to accredited investors and exchange-listed securities in a Tier 2 offering, but will not apply to non-accredited investors in a Tier 2 offering. The investment limitation for a *natural person* non-accredited investor is 10 percent of the greater of the purchaser’s annual income or net worth (determined by Regulation D, Rule 501). The investment limitation for a *non-natural person* non-accredited investor is no more than 10 percent of the greater of the purchaser’s revenue or net assets (as of the purchaser’s most recent fiscal year end).

The key Tier 1/Tier 2 difference is that issuers utilizing the exemption provided by a Tier 2 offering are subject to an ongoing reporting requirement. Tier 2 issuers must file electronic EDGAR reports with the SEC annually and semiannually, as well as current event reports. Tier 1 issuers, on the other hand, need only electronically file a Form 1-Z, *Exit Report Under Regulation*

A, no later than 30 calendar days after terminating or completing the offering, to provide information about the sales in the offering and to update certain issuer information. There is no ongoing reporting requirement for Tier 1 offerings.

**Required disclosures.** Parts I, II, and III of Form 1-A, *Regulation A Offering Statement Under the Securities Act of 1933*, require certain disclosures. Under Part II, Tier 1 issuers must disclose executive compensation by providing the *group*-level data for the three highest paid executives or directors and all directors as a collective group. But Tier 2 issuers must provide the *individual*-level data for the three highest paid executives or directors and all directors as a collective group.

**Related party transactions.** Tier 1 issuers must disclose the transactions with related persons, promoters and certain control persons *that exceed \$50,000 in the prior two years (or similar transactions currently contemplated)*. Tier 2 issuers must disclose the transactions with related persons, promoters, and certain control persons *that exceed the lesser of \$120,000 or 1 percent of the average total assets at year-end for the prior two completed fiscal years*.

**Financial statements.** Tier 1 issuers must provide *unaudited* balance sheets and other *unaudited* financial statements as of the two most recently completed fiscal year ends (or from the time the issuer first existed if shorter than the above-stated time period), by following the form and content requirements generally prescribed in Form 1-A, Part F/S. Tier 2 issuers, on the other hand, must provide *audited* balance sheets and other *audited* financial statements as of the two most recently completed fiscal year ends (or from the time the issuer first existed if shorter than the above-stated time period), by generally following Regulation S-X, Article 8 requirements.

Most of the disclosures required to complete Parts I, II, and III of Form 1-A remain the same for Tier 1 and Tier 2 issuers. In Part I, the disclosures required to be made by both Tier 1 and Tier 2 issuers include:

- Issuer information
- Eligibility
- Bad actor certification
- Summary information
- Jurisdictions
- Unregistered offerings

In Part II, these disclosures include:

- Cover page
- Table of contents

- Risk factors
- Dilution
- Plan of distribution
- Use of proceeds
- Business, property
- MD&A
- Directors/executive officers/significant employees
- Security ownership
- Securities
- Bad actor disclosure

In Part III, these disclosures include:

- Incorporation of reference
- Exhibits
- Signatures

**Blue sky impact.** As discussed, although Section 401 of the JOBS Act added Securities Act Section 3(b)(2) providing an exemption from *federal* securities registration, Section 401(b) does not exempt offerings made under Section 3(b)(2) and its corresponding rules from *state* securities registration.

Congress, utilizing Section 401, instructed the SEC to add Securities Act Section 18(b)(4)(D), thereby deeming Section 3(b)(2) securities “covered securities” under Section 18 of the Securities Act if they are “offered or sold on a national securities exchange” (Section 18(b)(1)) or “offered or sold to a qualified purchaser” (Section 18(b)(3)) as the term “qualified purchaser” is defined by the SEC for that purchase or sale. Section 18(b)(3), furthermore, authorizes the SEC to define a qualified purchaser differently for different securities types, provided the respective definitions are in the public’s interest and protect investors.

The SEC, in amending Regulation A for Regulation A + adoption, revised federal Rule 256 to provide that for Section 18(b)(3) purposes, a “qualified purchaser” includes any person who is offered or sold securities in a Tier 2 offering under Regulation A. The qualified purchaser definition, however, does not include Tier 1 offerings. Hence, the blue sky impact of the definition is that Tier 2 offerings are exempt from state securities registration and qualification requirements while Tier 1 offerings remain subject to state securities registration and qualification requirements.

It is important to note that both Tier 1 and Tier 2 offerings remain subject to state antifraud, enforcement, filing and fee requirements, consistent with the preemption framework of the National Securities Markets Improvement Act of 1996 (NSMIA). Therefore, as with Section

18(b)(4)(D) and Regulation D, Rule 506 offerings under NSMIA, the states, while being preempted from regulating the merits of a Regulation A offering, may require from Tier 2 issuers a notice filing containing offering materials, a consent to service of process and a fee.

Dating back to NSMIA's adoption, a number of state securities regulators have set forth notice filing and fee requirements for 18(b)(3) offerings made in their respective states. A second group of states have statutorily authorized their securities regulators to adopt, by rule or order, a notice filing and fee but this has yet to be done in these jurisdictions. The final group of states have not referenced Section 18(b)(3) in their securities statutes. These last two groups of states, however, may set forth notice filing and fee requirements now that the SEC has defined a qualified purchaser as an issuer making a Tier 2 offering under Regulation A.

**Conclusion.** Given the new qualified purchaser definition, the states with 18(b)(3) requirements may consider stepping them up by, for example, increasing the notice filing fee amount. And those states without

either notice filing/fee requirements or any statutory mention of 18(b)(3) may begin adopting provisions. California, for example, suspended its 18(b)(3) notice filing and \$600 fee requirement in the late 1990s because the SEC in the wake of NSMIA's adoption, showed no signs of setting forth a qualified purchaser definition. Washington, on the other hand, having had statutory authority under NSMIA to adopt a notice filing and fee for 18(b)(3) offerings but never having done so, is now the first state to propose a notice filing and fee for Tier 2 issuers in a Regulation A offering.

It is very likely that other states, including California, will soon revisit their Section 18(b)(3) requirements in the wake of Regulation A + 's adoption. The states may specifically adopt notice filing and fee requirements under Section 18(b)(3) following adoption of the amendment preempting a Tier 2 issuer's Regulation A offering from state registration (because Tier 2 issuers are qualified purchasers). In the meanwhile, here is how each state has been treating Section 18(b)(3) offerings since NSMIA's adoption in 1996.

| State-by-State Section 18(b)(3) Notice Filing Requirements |   |
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| <b>Alaska</b>  | The Alaska Department of Commerce, Community and Economic Development Commissioner <b>may</b> , by regulation or order, require the filing of any SEC-filed document for a covered security under Securities Act Section 18(b)(3) or (4). <i>But the Commissioner has not yet set forth a notice filing or fee requirement.</i>   |
| <b>Arizona</b>   | Issuers of covered securities under Securities Act Section 18(b)(3) must file concurrently with the Arizona Corporation Commission any SEC-filed document. Additionally, if the issuer is not a corporation or other entity organized under the laws of this state, the issuer must file a consent to service of process that complies with Arizona Securities Act Section 44-1862 [on consent to service of process]. The issuer's initial filing with the Commission must include a payment of \$100.   |
| <b>Arkansas</b>  | The Arkansas Securities Commissioner <b>may</b> , by rule or order, require: (1) The concurrent filing of any SEC-filed document for a covered security under Securities Act Section 18(b)(3) or Section 18(b)(4) as it existed on January 1, 2013; and (2) A fee of \$100 for the filing. However, at this time a notice filing or fee <i>is not required</i> for a covered security under Section 18(b)(3) or (4) of the Securities Act of 1933—it is only required for Rule 506 offerings.   |
| <b>California</b>  | The following transactions are not subject to Sections 25110 [issuer transaction qualification (registration)], 25120 [recapitalization/reorganization qualification (registration)], and 25130 [nonissuer transaction qualification (registration)]:<br><br>Any offer or sale of a security to a "qualified purchaser" as defined by SEC rule in connection with Securities Act Section 18(b)(3), if all the following requirements are met: (1) A notice is filed with the California Department of Business Oversight Commissioner before an offer is made in California, along with any SEC-filed documents pertaining to annual or periodic reports that the Commissioner, by rule or order, considers appropriate; (2) A consent to service of process accompanies the notice; and (3) a \$600 fee accompanies the notice.<br><br><i>But at this time, the exemption is inoperative because the SEC never defined a "qualified purchaser." As a consequence, California does not require a notice filing or fee for an 18(b)(3) offering.</i> |
| <b>Connecticut</b>   | Any person who offers or sells a security under Securities Act Section 18(b)(3) must file a consent to service of process with the Connecticut Banking Commissioner before the first offer or sale of the security in Connecticut. <i>This is Connecticut's only mention of a notice filing for Section 18(b)(3) offerings.</i>   |
| <b>Delaware</b>  | Generally, with respect to securities offered or sold under Section 18(b)(3) or (4) of the Securities Act of 1933, the Delaware Investor Protection Director <b>may</b> require the filing of any SEC-filed document, together with an appropriate filing fee (not to be less than \$200 nor more than \$1,000). <i>But the Director has not yet established a notice filing or fee for Section 18(b)(3) offerings.</i>   |

| State-by-State Section 18(b)(3) Notice Filing Requirements (Continued) |   |
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| District of Columbia   | Issuers making a federal covered securities offering under Securities Act Section 18(b)(3) or Section 18(b)(4)(A), (B) or (C) must send the District of Columbia Department of Insurance, Securities and Banking Regulation a notice filing consisting of a copy of each SEC-filed document pertaining to the offering, a Form U-2 and a \$250 fee.   |
| Florida  | Federal covered securities are defined in the Florida Securities Act and exempt from registration. <i>The exemption is self-executing.</i> Issuers making a federal covered securities offering under Securities Act Section 18(b)(3) or Section 18(b)(4)(A), (B) or (C) must send the District of Columbia Department of Insurance, Securities and Banking Regulation a notice filing consisting of a copy of each SEC-filed document pertaining to the offering, a Form U-2 and a \$250 fee.  |
| Georgia  | <i>Only mention of 18(b)(3) is in connection with issuer-agents--Georgia adopted the model Uniform Securities Act of 2002:</i> An individual who represents an issuer by effecting transactions solely in the issuer's federal covered securities under Securities Act Section 18(b)(3) or 18(b)(4)(D) is not exempt from issuer-agent registration if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.   |
| Hawaii   | <i>Only mention of 18(b)(3) is in connection with issuer-agents--Hawaii adopted the model Uniform Securities Act of 2002:</i> An individual who represents an issuer by effecting transactions solely in the issuer's federal covered securities under Securities Act Section 18(b)(3) or 18(b)(4)(D) is not exempt from issuer-agent registration if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.  |
| Idaho  | <i>Only mention of 18(b)(3) is in connection with issuer-agents--Idaho adopted the model Uniform Securities Act of 2002:</i> An individual who represents an issuer by effecting transactions solely in the issuer's federal covered securities under Securities Act Section 18(b)(3) or 18(b)(4)(D) is not exempt from issuer-agent registration if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.   |
| Illinois   | <i>Only mention of 18(b)(3) is in connection with salespersons:</i> No individual is considered a salesperson when effecting transactions only in Securities Act Section 18(b)(3) or 18(b)(4)(D) securities.<br><br>Issuers of federal covered securities required to file a notice and pay fees to the Illinois Secretary of State must file page one of Form U-1, together with a fee of 1/20th of 1 percent of the maximum aggregate offering price, with minimum and maximum fees of \$500 and \$2,500, respectively. The Secretary may allow another uniform form to be filed instead of page one of Form U-1.<br><br>But the above provision does not apply to any security listed or authorized for listing on the New York Stock Exchange or the American Stock Exchange, or that is listed on the National Market System of the Nasdaq Stock Market, or any successor to these entities, or listed or authorized for listing on a national securities exchange, or tier or segment of an exchange, that has listing standards that the federal SEC by rule, on its own initiative or on the basis of petition determines are substantially similar to the listing standards applicable to securities described in this Section, or is a security of the same issuer that is equal in seniority or that is a senior security. |
| Indiana  | <i>Only mention of 18(b)(3) is in connection with issuer-agents--Indiana adopted the model Uniform Securities Act of 2002:</i> An individual who represents an issuer by effecting transactions solely in the issuer's federal covered securities under Securities Act Section 18(b)(3) or 18(b)(4)(D) is not exempt from issuer-agent registration if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.   |
| Iowa   | <i>Only mention of 18(b)(3) is in connection with issuer-agents--Iowa adopted the model Uniform Securities Act of 2002:</i> An individual who represents an issuer by effecting transactions solely in the issuer's federal covered securities under Securities Act Section 18(b)(3) or 18(b)(4)(D) is not exempt from issuer-agent registration if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.  |
| Kansas   | <i>Only mention of 18(b)(3) is in connection with issuer-agents--Kansas adopted the model Uniform Securities Act of 2002:</i> An individual who represents an issuer by effecting transactions solely in the issuer's federal covered securities under Securities Act Section 18(b)(3) or 18(b)(4)(D) is not exempt from issuer-agent registration if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.  |
| Kentucky   | The Kentucky Securities Director <b>may</b> require the filing of any SEC-filed document as part of the federal notice filing, together with a \$250 notice filing fee, for any covered security issued under either Securities Act Section 18(b)(3) or 18(b)(4). <i>But the Securities Director has not yet set forth a notice filing and fee requirement for Section 18(b)(3) offerings.</i>  |

| State-by-State Section 18(b)(3) Notice Filing Requirements (Continued) |  |
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| Maine  | <i>Only mention of 18(b)(3) is in connection with issuer-agents—Maine adopted the model Uniform Securities Act of 2002:</i> An individual who represents an issuer by effecting transactions solely in the issuer's federal covered securities under Securities Act Section 18(b)(3) or 18(b)(4)(D) is not exempt from issuer-agent registration if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.   |
| Maryland   | Issuers intending to make securities offerings in Maryland under Securities Act Section 18(b)(3) or 18(b)(4)(A—C) must file a notice with the Maryland Securities Division <i>unless the securities or transactions qualify for a self-executing exemption under the Maryland Securities Act</i> . The notice must be filed with the Maryland Securities Commissioner at the same time a filing is made with the SEC or, if no SEC filing is made, then within 15 days after the first sale of the securities in Maryland. The fee is \$100 for each filing.   |
| Massachusetts  | The Massachusetts Secretary of the Commonwealth <b>may</b> , by rule or order, require the filing of any SEC-filed document together with annual or periodic reports of the value of securities sold or offered to be sold to persons located in Massachusetts for any security that is a federal covered security under Section 18(b)(3) or 18(b)(4)(A)—(C) of the Securities Act of 1933, together with a consent to service of process and any fees required by the Secretary. <i>But the Secretary has not yet set forth a notice filing or fee, by rule or order, for Section 18(b)(3) offerings.</i>   |
| Michigan   | <i>Only mention of 18(b)(3) is in connection with issuer-agents—Michigan adopted the model Uniform Securities Act of 2002:</i> An individual who represents an issuer by effecting transactions solely in the issuer's federal covered securities under Securities Act Section 18(b)(3) or 18(b)(4)(D) is not exempt from issuer-agent registration if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.  |
| Minnesota  | <i>Only mention of 18(b)(3) is in connection with issuer-agents—Minnesota adopted the model Uniform Securities Act of 2002:</i> An individual who represents an issuer by effecting transactions solely in the issuer's federal covered securities under Securities Act Section 18(b)(3) or 18(b)(4)(D) is not exempt from issuer-agent registration if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.   |
| Mississippi  | <i>Only mention of 18(b)(3) is in connection with issuer-agents—Mississippi adopted the model Uniform Securities Act of 2002:</i> An individual who represents an issuer by effecting transactions solely in the issuer's federal covered securities under Securities Act Section 18(b)(3) or 18(b)(4)(D) is not exempt from issuer-agent registration if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.   |
| Missouri   | <i>Only mention of 18(b)(3) is in connection with issuer-agents—Missouri adopted the model Uniform Securities Act of 2002:</i> An individual who represents an issuer by effecting transactions solely in the issuer's federal covered securities under Securities Act Section 18(b)(3) or 18(b)(4)(D) is not exempt from issuer-agent registration if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.  |
| Montana  | The Montana State Auditor/Securities Commissioner <b>may</b> require the filing of any SEC-filed document for a federal covered security issued under Securities Act Section 18(b)(3) or (4) and <b>may</b> require payment of a notice filing fee. <i>The Commissioner set forth a notice filing/fee requirement as follows:</i><br><br>Issuers making a securities offering under Section 18(b)(3) or 18(b)(4) of the Securities Act of 1933 must file a notice consisting of: (1) a letter explaining that the security is a federal covered security under Section 18(b)(3) or 18(b)(4) of the Securities Act of 1933; (2) a Form U-2, <i>Uniform Consent to Service of Process</i> ; and (3) a \$200 fee. The notice filing takes effect for one year from the date the Commissioner receives the filing and can be renewed before expiration by sending the Commissioner a \$200 renewal fee. The renewed notice filing then takes effect for one year from the date the current notice expires. |
| Nebraska   | The Nebraska Banking and Finance Director <b>may</b> require the filing of any SEC-filed document for a federal covered security under Securities Act Section 18(b)(3) together with a \$200 filing fee. <i>But the Director never established a notice filing/fee for Section 18(b)(3) offerings.</i>   |
| Nevada   | <i>Nevada's only mention of Section 18(b)(3) is in connection with sales representatives:</i> Sales representatives acting for issuers in securities transactions are exempt from Nevada licensing requirements, provided: (1) the securities are federal covered securities under Section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 and the sales representatives do not receive any remuneration for soliciting any persons in the state; or (2) the transactions effected in Nevada pertain exclusively to transactions covered by Section 15(h)(2) of the Securities Exchange Act of 1934.   |

| State-by-State Section 18(b)(3) Notice Filing Requirements (Continued) |   |
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| <b>New Hampshire</b>   | <p>Before making an offering under Securities Act Section 18(b)(3) the issuer must file an <i>initial</i> notice with the New Hampshire Secretary of State that includes the issuer's name, address, and telephone number, a description of the types of securities to be sold, a consent to service of process on Form U-2 signed by the issuer, any SEC-filed documents sent to that agency in connection with the offering, and a fee of <math>\frac{2}{10}</math> of 1 percent of the offering value of the issue, provided the fee does not exceed \$1,050, plus a nonrefundable initial notice fee of \$200.</p> <p>To <i>renew</i> the offering, the issuer must submit a fee of <math>\frac{2}{10}</math> of 1 percent of the offering value of the issue, provided the fee does not exceed \$1,050.</p> <p>A <i>late fee</i> of <math>\frac{1}{10}</math> of 1 percent of the offering value of a federal covered securities issue, with a maximum late fee of \$525, will be imposed in the following circumstances: (1) when federal covered securities sold are more than described in the notice filing, where the maximum notice filing fee or total flat fee has not been paid; or (2) when the notice filing for federal covered securities is amended to increase the amount of securities to be sold, subsequent to the date the filing was made in New Hampshire.</p>  |
| <b>New Jersey</b>  | <p>The New Jersey Bureau Chief <b>may</b> require a filing of any SEC-filed document in connection with the issuance of federal covered securities under Securities Act Section 18(b)(3) or 18(b)(4). <i>But the Bureau Chief has not yet set forth a notice filing/fee for Section 18(b)(3) offerings.</i></p>   |
| <b>New York</b>  | <p>New York's only express mention of Securities Act Section 18(b)(3) is on New York Form 99, under the "covered securities" category, which contains a check box for making an offering to "qualified purchasers" [1933 Act §18(b)(3)].</p>  |
| <b>North Carolina</b>  | <p>The North Carolina Deputy Securities Administrator <b>may</b>, by rule or order, require a filing of any SEC-filed document in connection with the issuance of federal covered securities under Securities Act Section 18(b)(3) or 18(b)(4), accompanied by a fee not to exceed \$150. <i>But the Administrator has not yet set forth a notice filing/fee, by rule or order, for Section 18(b)(3) offerings.</i></p>   |
| <b>North Dakota</b>  | <p>The Commissioner <b>may</b> require the filing of any SEC-filed notice or document in connection with federal covered securities issued under Securities Act Section 18(b)(3) or 18(b)(4), together with an appropriate filing fee. <i>But the Commissioner has not yet set forth a notice filing/fee for Section 18(b)(3) offerings.</i></p>  |
| <b>Ohio</b>  | <p>Ohio says the following in a 1996 interpretive opinion on federal covered securities:</p> <p>The creation of "covered securities" by the National Securities Markets Improvement Act of 1996 (NSMIA) to preempt current state laws will not have a significant impact on Ohio Blue Sky Laws, except for the preemption of merit review for mutual fund offerings. While registration is no longer required for mutual fund securities, however, a notice containing certain information about the offering must still be filed with the Ohio Securities Division, together with a consent to service of process and the fee that would have been required to register the securities (<math>\frac{1}{10}</math> of 1 percent of the aggregate price at which the securities will be sold to the public in Ohio, with minimum and maximum fees of \$100 and \$1,000, respectively).</p> <p>But the federal preemptions for covered securities, other than mutual fund offerings, will have an insignificant impact in Ohio because state exemptions for these securities already exist and were promulgated before NSMIA's enactment. Specifically, NSMIA-covered securities, including those sold to qualified purchasers, listed on national exchanges, and exempt under Section 4(1), 4(3) or 4(4) of the Securities Act of 1933 are currently exempt under the state's Blue Sky Laws.</p> <p>Specifically, a third category of covered securities, set out in new section 18(b)(3) of the 1933 Act, provides that securities sold to "qualified purchasers" are exempt. "Qualified purchasers" is yet to be defined by the SEC. However, Ohio already has an exemption for sales to "institutional investors," set out in R.C. 1707.03(D). "Institutional investor" is defined in R.C. 1707.01(S) and O.A.C. 1301:6-3-01(D) and includes "qualified institutional buyers" as defined in federal Rule 144A. In addition, the Ohio Securities Act already provides exemptions for sales to "accredited investors" under federal Rules 505 and 506 pursuant to R.C. 1707.03(W) and (Q) respectively. While the SEC definition may broaden these exemptions, it is likely that the majority of persons included in the SEC definition of qualified purchaser will have already been included in the Ohio definition of institutional investor or exempt under R.C. 1707.03(W) [for Rule 505 offerings—file Ohio Form 3-W, pay fee of \$100] or 1707.03(Q) [for Securities Act, Section 4(a)(2) offerings—file Ohio Form 3-Q, pay fee of \$100 for initial filing, \$50 for subsequent filings].</p> |
| <b>Oklahoma</b>  | <p><i>Only mention of 18(b)(3) is in connection with issuer-agents—Oklahoma adopted the model Uniform Securities Act of 2002:</i> An individual who represents an issuer by effecting transactions solely in the issuer's federal covered securities under Securities Act Section 18(b)(3) or 18(b)(4)(D) is not exempt from issuer-agent registration if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.</p>  |
| <b>Oregon</b>  | <p>Offerings of federal covered securities under Section 18(b)(3) of the Securities Act of 1933 are exempt from state registration if a notice is filed with the Oregon Department of Consumer &amp; Business Services Director, and a \$200 fee is paid.</p>   |

| State-by-State Section 18(b)(3) Notice Filing Requirements (Continued) |   |
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| Puerto Rico  | Issuers making securities offerings under Section 18(b)(3) or 18(b)(4) of the Securities Act of 1933 must file a notice, a consent to service of process and a fee of \$1,500 or equal to $\frac{1}{5}$ th of 1 percent of the maximum tender price at which the securities will be offered in Puerto Rico, with a minimum fee of \$350 and a maximum fee of \$1,500. The Puerto Rico Financial Institutions Commissioner may also require the filing of any SEC-filed document.  |
| Rhode Island   | <p>The Rhode Island Securities Director <b>may</b>, by rule or otherwise, require an <i>initial</i> filing of any SEC-filed document for covered securities issued under Securities Act Section 18(b)(3) or 18(b)(4) together with a consent to service of process and a filing fee of <math>\frac{1}{10}</math> of one percent of the maximum aggregate offering price, but not less than \$300 or more than \$1,000.</p> <p><i>Renewal.</i> An initial notice filing is effective for one year from the date of receipt by the Director. It may be renewed by filing a renewal notice and fee of <math>\frac{1}{10}</math> of one percent of the maximum aggregate offering price, but not less than \$300 or more than \$1,000.</p> <p><i>But the Securities Director has not yet established, by rule or otherwise, a notice filing/fee requirement for Section 18(b)(3) offerings.</i></p>   |
| South Carolina   | <i>Only mention of 18(b)(3) is in connection with issuer-agents—South Carolina adopted the model Uniform Securities Act of 2002:</i> An individual who represents an issuer by effecting transactions solely in the issuer's federal covered securities under Securities Act Section 18(b)(3) or 18(b)(4)(D) is not exempt from issuer-agent registration if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.   |
| South Dakota   | <i>Only mention of 18(b)(3) is in connection with issuer-agents—South Dakota adopted the model Uniform Securities Act of 2002:</i> An individual who represents an issuer by effecting transactions solely in the issuer's federal covered securities under Securities Act Section 18(b)(3) or 18(b)(4)(D) is not exempt from issuer-agent registration if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.   |
| Tennessee  | The Tennessee Securities Act and rules do not expressly mention Securities Act Section 18(b)(3) but the Act defines a "covered security" as, among other things, a security sold to "qualified purchasers," as defined by the SEC. The SEC has not yet defined a qualified purchaser, and there are no other express references to qualified purchasers in the Tennessee Securities Act or rules, whether providing either: (1) a notice filing and fee for 18(b)(3) offerings or covered securities sold to qualified purchasers; or (2) a specific exemption from notice filing and fee requirements for 18(b)(3) offerings or covered securities sold to qualified purchasers. Tennessee does exempt from notice filing and fee requirements those covered securities sold to an "institutional investor," which is defined in the Tennessee Securities Act.   |
| Texas  | <p>Before making an initial offer of federal covered securities, an issuer must file a notice, verified under oath by the applicant, that consists of either Page 1 of Form U-1, <i>Uniform Application to Register Securities</i>, or a document containing substantially similar information. The notice must include a consent to service of process, a \$100 filing fee and an examination fee of <math>\frac{1}{10}</math> of 1.0 percent of the aggregate amount of federal covered securities proposed to be sold to persons in Texas based on the price at which the securities are offered to the public. The filing and fee must be made electronically through NASAA's Electronic Filing Depository (EFD).</p> <p>Applicants required to pay fees to offer federal covered securities must file annual reports with the Texas Securities Commissioner showing the amount of securities authorized for sale in Texas, as well as the authorized amounts that were sold and not sold, and the consideration received on actual sales. Offerors selling federal covered securities that exceeded authorized amounts must submit specified documents and fees to cover the excess.</p> |
| Utah   | The Utah Securities Division <b>may</b> require the state filing of any SEC-filed document, together with an appropriate filing fee, for federal covered securities issued under Securities Act Section 18(b)(3) or 18(b)(4). <i>But the Securities Division has not yet set forth a notice filing or fee requirement for 18(b)(3) offerings.</i>   |
| Vermont  | <i>Only mention of 18(b)(3) is in connection with issuer-agents—Vermont adopted the model Uniform Securities Act of 2002:</i> An individual who represents an issuer by effecting transactions solely in the issuer's federal covered securities under Securities Act Section 18(b)(3) or 18(b)(4)(D) is not exempt from issuer-agent registration if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.  |
| U.S. Virgin Islands  | <i>Only mention of 18(b)(3) is in connection with issuer-agents—U.S. Virgin Islands adopted the model Uniform Securities Act of 2002:</i> An individual who represents an issuer by effecting transactions solely in the issuer's federal covered securities under Securities Act Section 18(b)(3) or 18(b)(4)(D) is not exempt from issuer-agent registration if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.  |

| State-by-State Section 18(b)(3) Notice Filing Requirements (Continued) |   |
|--|---|
| Washington   | The Washington Securities Director <b>may</b> require state filings of any SEC-filed documents in connection with a federal covered security issued under Securities Act Section 18(b)(3) or 18(b)(4) together with an appropriate filing fee. <i>But the Securities Director has not yet set forth a notice filing or fee requirement for 18(b)(3) offerings.</i>  |
| West Virginia  | The West Virginia State Auditor/Securities Commissioner <b>may</b> , by rule or otherwise, require the filing of any SEC-filed document for a federal covered security under Securities Act Section 18(b)(3) or (4), together with a filing fee for the document as appropriate under the West Virginia Securities Act, Section 305, subsections (m) and (n):<br>(m) Every person changing the name or address of a securities registration or notice filing must pay a \$50 fee for change.<br>(n) Every person amending a registration statement or notice filing or offering a document without increasing the dollar amount registered must pay a \$50 fee for each amended statement, notice filing or document.<br>But the Securities Commissioner has not yet established, by rule or otherwise, a notice filing/fee requirement for Section 18(b)(3) offerings. |
| Wisconsin  | <i>Only mention of 18(b)(3) is in connection with issuer-agents—Wisconsin adopted the model Uniform Securities Act of 2002:</i><br>An individual who represents an issuer by effecting transactions solely in the issuer's federal covered securities under Securities Act Section 18(b)(3) or 18(b)(4)(D) is not exempt from issuer-agent registration if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.   |
| Wyoming  | The Wyoming Secretary of State <b>may</b> , by rule or order, require the filing of any SEC-filed document for a covered security under Securities Act Section 18(b)(3) or (4). <i>But the Secretary of State has not yet, by rule or order, set forth a notice filing or fee requirement for 18(b)(3) offerings.</i>   |
|  | The jurisdictions that do not even reference Securities Act Section 18(b)(3) in their respective state securities statutes are:<br><ul style="list-style-type: none"> <li>• Alabama</li> <li>• Colorado</li> <li>• Guam</li> <li>• Louisiana</li> <li>• New Mexico</li> <li>• Pennsylvania</li> <li>• Tennessee—but Tennessee does mention qualified purchasers</li> <li>• Virginia</li> </ul>  |

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