# REGULATION A OFFERINGS: ALTERNATIVE REAL ESTATE FINANCING

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With an increasing number of regional banks tightening lending standards and numerous private real estate funds pulling back on commercial real estate investing generally, many would-be real estate projects are being sidelined or canceled altogether. Indeed, real estate deal-making has not been this dampened since the 2008 financial crisis, with many experts predicting additional headwinds for commercial real estate investors over the coming months. Nevertheless, for those willing to take a different approach to raising capital, new real estate projects can still come to fruition.

Enter Regulation A. Regulation A is an innovative way for real estate developers, lenders, investors, and other market participants to raise up to $75 million per year from both accredited and non-accredited investors. Although not exclusively used for real estate capital raises, Regulation A offerings can be used to finance all types of real estate projects, including (but not limited to): converting office space into residential, acquiring a portfolio of distressed properties, developing a life science building from the ground up, and rehabilitating and refurbishing industrial properties, among many others.

In many ways, raising capital for real estate projects under a Regulation A offering is similar to raising capital under Regulation D, except that certain issuers may benefit from the following key features of Regulation A:

- **Broadened Investor Base.** While traditional offerings under Regulation D focus primarily on raising capital from accredited investors and either prohibit (Rule 506(c)) or greatly limit and constrain the number of non-accredited investors (Rule 506(b)), Regulation A permits an issuer to raise capital from an unlimited number of both accredited and non-accredited investors.
- **Expanded Marketing.** As a type of "mini" public offering, companies raising capital under Regulation A are permitted to use the full complement of marketing tools to solicit investment in the offering. Conversely, offerings under Regulation D either prohibit any form of advertising, solicitation, or even the use of a company's own website to inform potential investors about the offering (Rule 506(b)) or impose other requirements on investors and the issuer that may make the offering less attractive in most circumstances (Rule 506(c)).
- **Accelerate Innovation.** Many Regulation A offerings are conducted, at least in part, online. Not only does this increase the geographic reach of the issuer (meaning both potential projects and investors are no longer limited to a particular geographic area), but it also increases the number of ways an issuer can target a particular investor or class of investor. For example, real estate investment platforms like Fundrise, CrowdStreet, and RealCrowd allow issuers to simultaneously list their offering(s) on multiple investment platforms (each platform having its own captive investor base) while also permitting an issuer to target

investors offline through direct mailings, public forums, road shows, and the like.

- **Non-Negotiated.** Unlike Regulation D offerings, where sophisticated parties may spend significant time and resources negotiating an arms-length transaction, the terms of most Regulation A offerings are largely set by the issuer with little or no negotiation with the investor.
- **Flexible Financing.** Offerings under Regulation A can be structured as debt, equity, or a combination of both, allowing issuers to structure the financing to meet the particular needs of a real estate project.
- **Greater Liquidity.** Investments sold through a Regulation A offering can be traded on the public markets. Accordingly, such investments are generally more liquid than investments purchased under a Regulation D offering.

In addition to the potential advantages over traditional offerings under Regulation D, Regulation A offerings may also provide significant benefits to companies (e.g., a REIT) that may be considering an IPO, either now or in the future. Generally, Regulation A offerings are considerably less complex, less time consuming, and less costly to conduct than a traditional IPO. In addition, unlike a traditional IPO where there are rules against "jumping the gun," a Regulation A offering allows the issuer to "test the waters" before engaging in a full-scale public offering, essentially permitting the issuer to obtain feedback and data from potential investors before undertaking the entire IPO process.

To be clear, Regulation A may not be the right fit for everyone. Among other things, Regulation A requires issuers to obtain annual audited financial statements and file semi-annual and annual reports with the SEC updating investors about the progress of the offering, and it can sometimes take several months to complete the SEC's filing and offering qualification process. Still, we believe Regulation A is a potentially valuable tool to raise a significant amount of capital from a large and diverse investor base, particularly in light of current market conditions.

At RCCB, we are committed to accelerating growth in the real estate sector by empowering individuals and companies to leverage the benefits of innovative financing sources like Regulation A. Our experienced team of professionals can provide you with expert guidance and support throughout the offering process to help you achieve your financing goals. Please contact Matt Devine or Shawn Rexroad with questions or for guidance.

## PROFESSIONALS

Matthew L. Devine

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## CAPABILITIES

Real Estate