



Filing Financial Statements and Other Reports Under Regulation A

“I know I have to include financial statements when I file an Offering Statement under Regulation A. When should these statements be dated and what periods should they cover?”

“What ongoing reports do I have to file with the SEC after my Regulation A offering is qualified, and when do I have to file them?”

We hope to answer these questions below.

Types of Financial Statements in the Offering Statement

A Regulation A Offering Statement can require four kinds of financial statement:

- A balance sheet as of the end of a fiscal year
- An interim balance sheet
- A statement of income, cash flows, and changes in stockholders’ equity
- Interim statements of income, cash flows, and changes in stockholders’ equity

Requirements for Financial Statements

In general, the financial statements must be audited in a Tier 2 offering, but not in a Tier 1 offering. However, interim financial statements – balance sheets and statements of income and cash flows – never have to be audited, even in Tier 2.

Audits in Regulation A may be performed using U.S. Generally Accepted Audited Standards or the standards of the Public Company Accounting Oversight Board. The accounting firm that prepares the audit does not have to be registered with the PCAOB.

When Should the Financial Statements in the Offering Statement Be Dated?

This is tricky, because there are not one, but *two* important dates: the date the Offering Statement is *filed* with the SEC, and the date it is *qualified* by the SEC. By definition, the date of qualification is always after the date of filing, by a month in the best of circumstances and often by many months. That means that a financial statement that was timely when the Offering Statement was filed might be “stale” by the time it’s qualified. In that case, you’ll need to submit updated financial statements before qualification.

Thus, read the term “Reference Date” in the chart below to mean the date of *filing*, when you’re preparing your Offering Statement. But bear in mind that eventually the “Reference Date” will mean the date of *qualification*. So if you’re close, you might as well use a later date.

If the Reference Date Is . . .	Then File a Balance Sheet, or Balance Sheets, Dated . . .	And an Interim Balance Sheet Dated . . .	And Statements of Income, Cash Flow and Changes in Stockholders’ Equity for the 12 Month Period or Periods Ending On . . .	And an Interim Statement of Income and Cash Flow for the 12 Month Period Ending On . . .
Between the date the issuer is formed and three months after the end of its first full fiscal year (typical newly-formed entity)	Within nine months before the Reference Date	None	None	None
Three months or less after the end of your most recent fiscal year	As of the <i>two</i> fiscal year ends that precede the most recently ended fiscal year (e.g., if your fiscal year ended 04/30/2017 and the Reference Date were 06/20/2017, you would need balance sheets for 04/30/2015 and 04/30/2016)	More than six months after the date of the most recent year-end balance sheet (so in the example above, after 10/31/2016)	The dates of the <i>two</i> year-end balance sheets (so in the example, as of 04/30/2015 and 04/30/2016)	The date of the interim balance sheet (so in the example, on 10/31/2016 or later)
More than three months but not more than nine months after the end of your most recent fiscal year	As of the <i>two</i> most recent fiscal year ends	None	The dates of the <i>two</i> year-end balance sheets	None
More than nine months after the end of your most recent fiscal year	As of the <i>two</i> most recent fiscal year ends	More than six months after the last fiscal year end	The dates of the <i>two</i> most recent fiscal year ends	The date of the interim balance sheet



Ongoing Reporting under Regulation A

What to File:	When to File:	What Information is Required:
Special Financial Report on Form 1-K or Form 1-SA (Tier 2 Issuers Only)	<ul style="list-style-type: none"> If the Offering Statement did not include audited financial statements for the most recently ended fiscal year, within 120 days after the date of qualification. This is Situation 1. If the Offering Statement was qualified during the last six months of the current fiscal year and did not include unaudited financial statements for the first six months of the current fiscal year, within 90 days after the date of qualification. This is Situation 2. 	<ul style="list-style-type: none"> In Situation 1, the special financial report should be filed on Form 1-K with audited financial statements for the most recent fiscal year. In Situation 2, the special financial report should be filed on Form 1-SA with unaudited financial statements covering the first six months of the current fiscal year.
Semi-Annual Reports on Form 1-SA (Tier 2 Issuers Only)	<p>Within 90 days after the end of the first six months of each fiscal year, beginning with:</p> <ul style="list-style-type: none"> The first six months of the fiscal year immediately following the most recent fiscal year for which financial statements were included in the Offering Statement; or If the Offering Statement included interim financial statements for the first six months of the current fiscal year, then the first six months of the following fiscal year. 	<p><i>Information:</i></p> <ul style="list-style-type: none"> Management’s discussion and analysis of financial condition and results of operations (Items 9(a), (b) and (d) of Form 1-A) for the six-month period. Any items required to be reported on Form 1-U (see below), if not previously reported. <p><i>Financial Statements:</i></p> <p>Unaudited financial statements for the six-month period.</p>
Annual Reports on Form 1-K (Tier 2 Issuers Only)	<p>Within 120 days of the end of each fiscal year, beginning with the fiscal year in which the Offering Statement is qualified.</p>	<p><i>Information:</i></p> <ul style="list-style-type: none"> Description of the business Management’s discussion and analysis of financial condition and results of operations Directors and officers Security ownership of management and certain major security-holders Related party transactions Any items required to be reported on Form 1-U (see below), if not previously reported <p><i>Financial Statements:</i></p> <p>Audited financial statements dated on and as of the end of the fiscal year</p>
Current Report on Form 1-U (Tier 2 Issuers Only)	<p>Within four business days following the date the company:</p> <ul style="list-style-type: none"> Enters into, terminates, or amended any material agreement Enters bankruptcy or receivership Makes any material modification to the rights of security-holders Changes its certifying accountant Discovers material errors in previously issued financial statements <p>If the event occurs on a weekend or legal holiday, the four-day period starts on the first business day thereafter.</p>	<p>Information about the event.</p>
Exit Report on Form 1-Z	<p>Tier 1 Issuers – Upon termination or completion of the offering</p> <p>Tier 2 Issuers –</p> <ul style="list-style-type: none"> If the offering is terminated If the offering is completed and the securities are held by fewer than 300 people, the issuer’s obligation to file reports on Form 1-K, Form 1-SA, or Form 1-U on an ongoing basis may be terminated by filing a report on Form 1-Z. The issuer is still required to file a Form 1-K for the fiscal year in which its offering is qualified, however. 	<p>N/A</p>



Mark Roderick is an attorney at Flaster Greenberg PC concentrating his practice on the representation of entrepreneurs and their businesses. He maintains a Crowdfunding blog, which contains news, updates and links to important information pertaining to the JOBS Act and how Crowdfunding may affect your business. For more information, email him at mark.roderick@flastergreenberg.com, call him at [856.661.2265](tel:856.661.2265), follow him on twitter [@CrowdfundAttny](https://twitter.com/CrowdfundAttny) or visit www.crowdfundattny.com.