

I have the following comments in to the request for comments by the Securities and Exchange Commission (the "Commission") in advance of rule making required to be undertaken pursuant to the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"):

1. The Commission's rules should make it clear that for purposes of the exclusion established by Section 502 of the JOBS Act, a person need not be an employee of the issuer. In some cases, the issuer may establish a compensation plan pursuant to which employees of its subsidiaries or even brother-sister corporations participate. Section 502 requires only that the securities be held by persons who received the securities pursuant to an employee compensation plan. Congress did not state that the employee compensation plan must be maintained by the issuer.

2. Consistent with Congressional intent, the Commission should adopt a broad definition of "employee compensation plan" as follows:

"Employee compensation plan" means any plan or arrangement pursuant to which persons receive securities of an issuer either (i) as compensation for services rendered, or to be rendered to, the issuer, the issuer's parent, or any direct or indirect subsidiary of the issuer; or (ii) or for the purposes of retaining or incentivizing employees of the issuer, the issuer's parent, or any direct or indirect subsidiary of the issuer.

I believe that the definition proposed by Foley & Lardner LLP in its pre-comment letter dated May 24, 2012 is too narrow because it excludes the possibility that a person may be an employee of the issuer's parent. Also, that proposed definition is limited to issuances to *employees*. Section 502 does not require that the securities be issued directly by the issuer. Rather, it only requires that the securities be "received" pursuant to an employee compensation plan. The jobs a

3. Section 502 refers to "persons" who receive securities, the statute does not expressly require that persons be natural persons. Thus, the Commission should make it clear that the securities may be received by IRA accounts or trusts.

4. Because Section 12(g)(1)(A) requires an assessment as of the last day of the fiscal year, the Commission's rules should make it clear that an issuer is only required to determine whether an investor is an accredited investor as of the last day of each fiscal year. Because some investors may be unwilling to respond or otherwise unavailable, the Commission's rules should provide that an issuer is entitled to rely on information previously provided to it if an investor fails to furnish the issuer with updated information within 15 days of the issuer's request.

By way of background, I previously served as California's Commissioner of Corporations, Interim Savings & Loan Commissioner, and Deputy Secretary and General Counsel to the California Business, Transportation & Housing Agency. These comments are submitted in my individual capacity and not on behalf of any other person.