

Stanley Keller

April 3, 2014

By Email: rule-comments@sec.govU.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Proposed Rule Amendments for Small and Additional Issues
Exemptions Under Section 3(b) of the Securities Act
(Rel. No. 33-9497; File No. S7-11-13)

This letter comments on the Commission's proposed rule amendments to Regulation A under the Securities Act of 1933 to implement Title IV of the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act") set forth in the above-referenced Release. Specifically, it comments on the Commission's proposal to provide for preemption of state securities law registration and qualification requirements for securities sold to purchasers in a Regulation A Tier 2 offering. I participated in the comment letter of the Federal Regulation of Securities Committee of the Business Law Section of the American Bar Association on the Release as a member of the Drafting Committee, and fully subscribe to that letter's support of the Commission's preemption proposal for the reasons set forth in that letter. I wish to separately discuss an alternative approach to dealing with the issue of application of state securities law registration and qualification requirements to Regulation A Tier 2 offerings should the Commission determine not to adopt its preemption proposal in the form proposed in the Release.

I believe that the Commission could go part way toward addressing the concerns identified in the Release regarding the impact of state securities law compliance on the use of Regulation A as a viable capital-raising alternative if it defined "qualified purchasers" for purposes of a Tier 2 offering to mean "accredited investors" as defined in Rule 501 of Regulation D. Although not a complete solution to the obstacle state securities law compliance would present to the use of the new Tier 2 exemption, this approach would reduce that obstacle by permitting issuers to decide in which states they chooses to limit sales to accredited investors and thereby avoid the burdens of that state's "blue sky" laws and in which states they will seek to comply with those laws in order to be able to sell to non-accredited investors. This is important flexibility for issuers to have in order to structure their capital-raising activities, recognizing that the "blue sky" laws of many states involve both disclosure regulation through registration or qualification and substantive merit regulation, including through application of the NASAA statements of policy, some of which could impose impediments to the offering.

Moreover, the foregoing approach would put Tier 2 offerings on a par with Rule 506(c) offerings with regarding to preemption of state securities law regulation and thus encourage issuers to use Regulation A with its enhanced investor protections.

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I note that the foregoing alternative approach would address concerns expressed in the NASAA comment letter dated March 24, 2014. First, it would deal with NASAA's questioning the authority of the Commission to adopt a transaction based definition of "qualified purchasers" without taking into account the nature of the investors and their need for protection. Second, it would leave the states in a position to protect those investors who were not "accredited investors" and therefore in most need of that protection, and would limit the preemption of state securities laws to those investors "who could, based on qualifying factors such as wealth, income, or sophistication, fend for themselves".¹

I want to emphasize that I support the Commission's proposal on preemption of state securities laws and offer this alternative approach only should the Commission determine not to adopt that proposal. Also, please note that this letter represents my personal views and not those of anyone else.

Very truly yours,



Stanley Keller

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¹ See NASAA March 24, 2014 letter, p. 8.