



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

DIVISION OF ECONOMIC JUSTICE
INVESTOR PROTECTION BUREAU

May 7, 2014

The Honorable Mary Jo White, Chair
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

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

Dear Chair White:

The Office of the Attorney General of the State of New York is charged with enforcing New York's securities fraud statute, General Business Law Article 23-A, commonly known as the Martin Act. I write in response to the Commission's proposed amendments implementing Section 401 of the JOBS Act and to object to the possibility that the Commission will effectively preempt state registration and review of all Regulation A offerings.

In Section 401 of the JOBS Act, Congress raised the offering limit for Regulation A securities offerings from \$5 million to \$50 million, and provided that such offerings would be treated as "covered securities" exempt from state registration only to the extent that they were sold on a national exchange or sold to "qualified purchasers." In its proposed amendments, the Commission has gone much further, proposing to preempt all state registration and review of these securities by defining a "qualified purchaser" as any offeree or, except in certain circumstances, any purchaser of a Regulation A offering, without regard to the investor's sophistication or financial resources.

State regulators have long been the first line of defense for the investing public. As many commentators have noted, state regulators are particularly well-positioned to address investor and issuer concerns related to smaller offerings, given their greater knowledge of local conditions as well as the resource constraints faced by the Commission. In debating the JOBS Act, Congress considered and rejected less sweeping preemption of state review than that currently proposed by the Commission. The final legislation reflected the concerns of legislators who argued that Regulation A securities "are sometimes high-risk offerings that may be susceptible to fraud, making the protections provided by state review essential." H.R. Rep. No. 112-206, at 13 (2011).

The Commission's proposed definition of "qualified purchaser" for the purpose of Regulation A offerings is also inconsistent with legislative and regulatory history. As the Commission itself recognized in a previous rulemaking, Congress has made clear that the "primary factor" in defining the extent of this state-law exemption "must be the financial sophistication of these investors. ... [T]he nature of the investor rather than the investment is the critical feature...." *Defining the Term "Qualified Purchaser" Under the Securities Act of 1933*, 66 Fed. Reg. 66,839, 66,845 (Dec. 27, 2001). The Commission's proposed definition inverts this mandate, preempting state registration based solely on the type of investment.

Finally, the Commission's proposal would effectively disregard the development by the North American Securities Administrators Association ("NASAA") of a coordinated multi-state review program for Regulation A offerings. The coordinated review program, as approved by an overwhelming majority of NASAA member jurisdictions, including New York, is designed to significantly increase the efficiency of state registration and review while maintaining existing investor protections.

I join my fellow state securities regulators in urging the Commission to reconsider its state preemption proposal and instead work with the states to fulfill our shared mission of protecting investors and encouraging capital formation.

Very truly yours,



Chad Johnson
Bureau Chief
Investor Protection Bureau

cc: The Honorable Luis A. Aguilar, Commissioner
The Honorable Daniel M. Gallagher, Commissioner
The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner
Mr. Keith F. Higgins, Director, Division of Corporation Finance