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July 15, 2014

Kevin M. O'Neill, Deputy Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File No. S7-11-13: Regulation A⁺

Dear Mr. O'Neill:

I am writing to applaud attorney Samuel Guzik for stating publicly what many securities lawyers have been saying privately – that the NASAA's lobbying campaign against the Commission's proposed Regulation A⁺ rules published on December 18, 2013 has been both over-the-top and unpersuasive.

NASAA has expressed dismay, even horror, over the Commission's proposal that Regulation A⁺ offerings be conducted without having to meet whatever separate "Blue Sky" registration, qualification, exemption, notice, filing, or consent requirements would otherwise be imposed by statute, regulation, policy, or interpretation (referred to here, collectively, as "Blue Sky requirements") in each relevant State. But as Mr. Guzik and others note, it is difficult *not* to read the JOBS Act as encouraging the SEC to preempt Blue Sky requirements:

- * Authority for Regulation A⁺ is found in the JOBS Act under Title IV, which contains just two Sections. Arguably, *both* sections reflect Congressional skepticism over Blue Sky requirements. Section 402 requires a prompt report from the Comptroller General on whether Blue Sky requirements have hampered existing Regulation A. Section 401 invites the Commission (after receiving such report) to craft new "covered securities" rules that preempt Blue Sky requirements from applying to Regulation A⁺ offerings in some or all circumstances.
- * As was known even before the Comptroller General report, the number of offerings conducted under Regulation A reached their peak in 1997 and 1998 and has since declined to near zero. It is noteworthy that Congress in 1997 amended the Securities Act to preempt Rule 506 offerings from all Blue Sky requirements (other than filing fee requirements), thereby making those offerings simpler and less expensive. In contrast to Regulation A, Rule 506 has been an extraordinarily useful exemption for raising capital.
- * Section 18 of the Securities Act automatically preempts Blue Sky requirements for registered offerings of securities authorized to trade on a national securities exchange. Regulation A⁺ offerings have many attributes similar to registered public offerings. The disclosure document

for a Regulation A⁺ offering is similar to Form S-1 and likewise requires SEC Staff clearance before the offering can be consummated. As with S-1 offerings, misstatements in the Regulation A⁺ offering circular can give rise to liability under Section 12(2). Is it surprising that the JOBS Act amended Section 18(b)(4)(D) to allow for preemption in the case of Regulation A⁺ offerings?

NASAA has published a Regulation A⁺ “Issue Brief” making four principal points. What follows is a summary of my views on each of NASAA’s four points:

1. The Commission’s December 18 proposal disregards the important role of the states in regulating Reg A offerings.

The Commission did consider the Comptroller General report on the states’ historic role in regulating Reg A offerings. That report offered further evidence that Blue Sky requirements hampered Reg A and made it too expensive and cumbersome.¹

2. The Commission’s arbitrary decision to prohibit the states from performing an important oversight role could have negative implications for retail investors.

Incremental oversight at the filing stage drives up cost and complexity, but will not incrementally protect retail investors unless the SEC Staff’s own review is frequently defective and inadequate.

3. States question the legal sufficiency of the proposal.

The Act seems to provide the SEC with broad latitude to define the scope of preemption. All recipients of an approved Form S-1 prospectus are deemed qualified to purchase – why not all recipients of an approved (and similar) Reg A⁺ offering circular?

4. The states have already developed a new coordinated review system that will ease regulatory burdens without sacrificing investor protection.

Reflecting the intractable diversity of state standards, NASAA’s “streamlined” review process generally calls for two “lead” state reviewers – one from a “disclosure” state and one from a “merit” state. All affected states (not just the lead states) are permitted to weigh in with additional comments, if they are so inclined. NASAA’s effort to impose strict time limits is indeed laudable, but as shown by the Comptroller

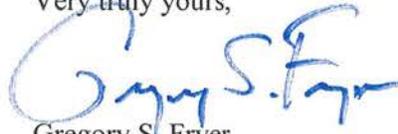
¹ In pointing blame at the states, the Comptroller General’s report in my view underplayed the SEC’s own role in the demise of Regulation A. My 2009 experiences in a state-exempt Regulation A offering may be instructive. See February 28, 2014 comment letter at <http://www.sec.gov/comments/s7-11-13/s71113-30.pdf>. Nevertheless, although I believe that SEC Staff neglect of Regulation A has contributed to the exemption’s demise, I certainly don’t believe that duplicative and overlapping review of small offerings is helpful to issuers or investors. If the SEC finds itself unwilling to review these offerings promptly with context-appropriate standards, I would favor having the Staff defer to a single state reviewer.

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General report would have been useful years ago in helping keep Reg A from sliding into disuse. Mysteriously, NASAA's proposed streamlining is limited to Regulation A⁺ and does not apply to (smaller) Reg A offerings.

The Commission is to be applauded for designating the SEC Staff as having sole regulatory authority to review and clear Regulation A⁺ offering circulars. Doing so is consistent with Congress' evident skepticism over whether incremental state review would offer protections that sufficiently outweigh the burdens of overlapping and inconsistent conditions for these offerings.

Very truly yours,



Gregory S. Fryer

GSF/ddm