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April 12, 2012

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: SEC Regulatory Initiatives Under the JOBS Act
File No. JOBS Act Title IV Small Company Capital Formation

Ladies and Gentlemen:

Set forth below is one comment concerning Title IV of the JOBS Act. Because I expect that I may provide additional input through Committees of the Business Law Section of the American Bar Association concerning the details of the Commission rules when they are proposed, this letter is restricted to one comment which I believe may be important to be addressed in the proposed enabling regulations. This comment is mine alone and does not reflect any input from other members of the Business Law Section of the American Bar Association or the Securities Laws Committee of the Washington State Bar Association, nor does it constitute the official position of this firm or any of its clients on the subject.

First, I commend the Commission's invitation to submit comments before enabling rules are proposed, as this should expedite the rulemaking process. My comment focuses on one aspect of Title IV of the JOBS Act which may be of special interest here in the Pacific Northwest in light of our history of regional initial public offerings (IPOs) by brokerage firms with an investment banking presence in the area.

Regional Public Offerings in the Pacific Northwest

Throughout the 1970s, 1980s and 1990s, broker-dealers with a corporate finance presence in the Pacific Northwest routinely firmly-underwrote public offerings by Pacific Northwest businesses that had proven records of profitability. In general, these were

established, successful Northwest businesses rather than speculative enterprises that were largely unproven. Typically, those businesses had to demonstrate the capacity to scale up their successes following the IPO and have credible potential for using the proceeds from the offering for future growth.

These businesses were those common in the Pacific Northwest, such as, for example, internet and computer services, software and peripherals, bar code equipment, medical equipment and information systems, securities broker-dealers, commercial banking and thrift institutions, life insurance, regional airlines, avionics manufacture, jet engine castings, video tape duplication, fabric and garment manufacture, retail clothing, grocery, restaurant and fast food chains, seafood packing, Alaska trucking, capital equipment leasing, Alaska and Canada vacation tours, RV campclubs, waterjet cutting, and oil drilling equipment.

With the dot.com bust and cost increases that followed the enactment of Sarbanes-Oxley, regional IPOs declined precipitously, both in the Pacific Northwest and elsewhere in the U.S. Although such of these brokerage firms that still exist no longer have the type of Northwest corporate finance presence they once had, many of the experienced individuals who staffed their local offices over the years still live here, and some might be willing to again provide corporate finance services for regional underwriters should the need again arise. The hope is that the changes to Section 3(b) of the Securities Act of 1933 effected by Title IV of the JOBS Act will be followed by promulgation by the Commission of an exemption comparable to Regulation A under the Securities Act of 1933 (Securities Act) for public offerings of up to \$50 million that will be free from the full public company regulation that results from registration under Section 12 of the Securities Exchange Act of 1934 (Exchange Act).

Because of the stigma associated with Regulation A offerings, many of which historically have been small and speculative, I suggest that the Commission may wish to use a different title for the regulation implementing the new exempt offerings of up to \$50 million under Section 3(b) as amended by the JOBS Act.

Exempt Regional Public Offerings Under Section 3(b)

In recognition of the substantial compliance costs associated with full registration under the Securities and Exchange Acts, Congress in enacting the JOBS Act¹ has sought to provide a less imposing regulatory approach to moderate-sized public offerings by increasing the limit for exempt public offerings under Section 3(b) from \$5 million to \$50

¹ H. R. 3606, One Hundred Twelfth Congress of the United States of America, Second Session.

million.² A company making an exempt Section 3(b) public offering would not by virtue of that event alone trigger registration under Section 12 of the Exchange Act and consequently all of the expensive periodic reporting, proxy, tender offer, short-swing profits recovery and other provisions regulating public companies under that Act. However, in order to provide adequate information to the stock market for trading purposes, such a company would still be obligated under the JOBS Act to make available to Section 3(b) offering investors and file with the Commission periodic disclosures regarding the company, its business operations, its financial condition, its corporate governance principles, use of investor funds, and other disclosures that may be required by the Commission.³

Since 1964, registration under the Exchange Act has been required of a company that has a class of equity securities held of record by 500 or more persons at the end of its fiscal year. The JOBS Act applies the 500 person limit to non-accredited investors and increases it overall to 2,000 persons, while excluding persons whose shares have been received solely under an employee compensation plan in transactions exempt from registration under the Securities Act.⁴ This would appear to provide some regulatory relief to companies going public under a new Section 3(b) regulation by postponing, or perhaps even eliminating, the time they would become subject to full public company compliance.

However, few established underwriters would take a company public unless it were listed on a national securities exchange such as NASDAQ, and, in any event, preemption of registration under state securities laws (a practical necessity in these offerings) is conditioned upon listing upon a national securities exchange,⁵ so such listing would appear mandatory as a practical matter. But all national securities exchanges now require Exchange Act registration as a condition to listing, so, unless this is adequately dealt with by the Commission in its enabling regulations for the JOBS Act, companies going public under Regulation A would by so listing still find themselves subject to all of the expensive periodic reporting, proxy, tender offer, short-swing profits recovery and other provisions regulating public companies under that Act, which does not appear to be what Congress intended in adopting the periodic disclosures provision [new subsection (4) of Section 3(b)] of Section 401(a) of the JOBS Act.

In view of the above, I respectfully suggest that the Commission include in the proposed rules to implement Title IV of the JOBS Act one or more provisions making

² JOBS Act, Section 401(a), amending Section 3(b) of the Securities Act to add subsection (2)(A) thereto.

³ JOBS Act, Section 401(a), amending Section 3(b) of the Securities Act to add subsection (4) thereto.

⁴ JOBS Act, Section 501.

⁵ JOBS Act, Section 401(b), amending Section 18(b)(4) of the Securities Act to add subparagraph (D) thereto.

Securities and Exchange Commission

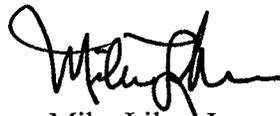
April 12, 2012

Page 4

clear that national securities exchanges, including NASDAQ, may list securities publicly offered under the implementing regulation of new Section 3(b) without registration under Section 12 of the Exchange Act, so long as the companies doing so make available to investors and file with the Commission the periodic disclosures regarding the company, its business operations, its financial condition, its corporate governance principles, use of investor funds, and other disclosures required under new subsection (4) of Section 3(b) of the Securities Act as amended by Section 401(a) of the JOBS Act and Commission rules implementing that new subsection.

I hope that the above comments will prove useful to the Staff and the Commission in developing the proposed rules to implement Title IV of the JOBS Act.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mike Liles, Jr.", written in a cursive style.

Mike Liles, Jr.