WR HAMBRECHT + CO

January 4, 2013

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Request for Public Comments on SEC Regulatory Initiatives under the JOBS Act: Title IV – Small Company Capital Formation

Ladies and Gentlemen:

This letter is submitted on behalf of W.R. Hambrecht + Co ("WRH+Co") in response to the request of the Securities and Exchange Commission (the "SEC") for public comments relating to the rules the SEC is required to adopt pursuant to the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act").

WRH+Co is an innovative broker-dealer focused on providing open and fair access to financial markets for all its clients. We provide underwriting and advisory services for technology and emerging growth companies, as well as a fully electronic retail brokerage platform for individual investors. The firm's impartial auctions have tried to change the traditional investment banking landscape by allowing the market to determine pricing and allocations.

Because of our expertise in bringing small, fast-growing companies public, policymakers repeatedly have asked for our views concerning how best to encourage public capital formation and job creation. Since 2010, we have been engaged in discussions focusing on the need to revise and revitalize Regulation A in order to promote public capital raising by smaller companies. We point out that these discussions preceded the JOBS Act by almost twenty-four months. With the enactment of the JOBS Act in April 2012, we were encouraged that Congress recognized public capital raising for smaller companies as a national priority. While the JOBS Act did not amend Regulation A in the manner we advocated, the Act does expressly contemplate the prospect of a capital-raising alternative similar to Regulation A in Title IV. Section 401 of the JOBS Act creates a new subsection (2) to Section 3(b) of the Securities Act of 1933, as amended (the "Securities Act") that requires that the SEC adopt an exemption allowing companies to issue up to $50 million in securities publicly, subject to certain conditions and requirements. Unlike other provisions of the JOBS Act, Title IV does not set out a specific timetable during which the SEC is required to undertake rulemaking to propose and adopt a Section 3(b)(2) exemption.

Unfortunately, as of this writing in January 2013, there has yet to emerge proposed regulations that would help realize the promise of Section 3(b)(2) and implement an instruction of Congress that continues to have broad, bipartisan support. While some may point to the Title I "IPO on-ramp" provisions of the JOBS Act, and assert that these provisions are sufficient to address the capital raising needs of smaller companies, this is simply not the case. Nor will it ever be. Smaller, truly "emerging", companies require an alternative to the IPO on-ramp so that they are not relegated to conducting exempt securities offerings, with limited or no disclosure requirements, to raise much-needed capital. The U.S.

capital markets have undergone fundamental changes in the last two decades, which have had the result of limiting the financing alternatives available to smaller companies. This can be remedied by the SEC through the adoption of implementing rules under Section 3(b)(2) that incorporate the basic framework of existing Regulation A while raising the dollar threshold applicable to the exemption and adding important investor protection enhancements.

Background

According to the National Ventures Capital Association, over the last 40 years 92% of job growth occurs after a company goes public. Some estimate that the current slump in the IPO market may have cost the U.S. economy 22 million jobs. While IPOs create job growth, acquisitions often result in job losses as the companies seek to eliminate duplicative positions or private equity firms look to drive down costs to pay off debt.

In July 1986, Adobe Systems filed to sell to the public 500,000 shares at $10 to $11 dollars – approximately $5 million. The company was only four years old and had 49 employees. The public markets provided the capital for the company to grow to over $4 billion in revenue with close to 10,000 employees. Probably far more important than the jobs created at Adobe itself, were the jobs created at the thousands of companies using its PostScript and Illustrator software. Public financing allowed Adobe to stay independent of any particular OEM (e.g., Apple, Xerox, or Microsoft) ensuring that the dissemination of its technology would not be limited by the strategic decisions of a single computer manufacturer.

Adobe is not the only industry leader to have raised only a small amount in its IPO. Starbucks, Yahoo, AOL, Peet's Coffee, Whole Foods, Panera Bread, Odwalla, Intel, Amgen, Oracle and Cisco all raised less than $50 million in their IPOs. By today's standards these offerings would be considered too small for any investment bank to undertake, forcing the Starbucks and Adobes of the future to rely on private investments or strategic acquirers to fund (and sometimes limit) their growth. Worse yet, many small, promising companies are relegated to relying on finders or smaller broker-dealers promoting, as "public" alternatives, reverse mergers, SPACs, or back-door quotations on the OTC Bulletin Board. Based on our discussions with venture capital firms and lenders to small growth companies, we believe that there are approximately 5,000 private companies that should be candidates for IPOs in a properly functioning public capital market.

We agree with the other commentators that the SEC should create a modern, streamlined exempt offering process appropriate for smaller, emerging companies.

Recommendations

Eligibility for Section 3(b)(2) Exemption. The Section 3(b)(2) offering exemption should be available to issuers that are not SEC-reporting companies. In order to promote the objective of job creation, availability of the exemption should be limited to operating companies, and the SEC should expressly prohibit use of Section 3(b)(2) by passive funds and by blank check or special purpose acquisition companies or shell companies. The SEC should redefine "eligible issuer" to exclude specifically these types of issuers. However, the SEC should expressly permit use of the exemption by business development companies. Given the policy goals of encouraging investment in growth-oriented companies, it would be appropriate to permit business development companies to use the exemption to raise funds for their portfolio companies. In order to prevent abuse of the Section 3(b)(2) exemption, the "bad actor" disqualification provisions contained in Regulation A should be incorporated, and these provisions should be aligned with the bad actor provisions ultimately incorporated in Regulation D. We believe that the exemption will be most useful if the markets and investors have a certain degree of confidence in the offerings executed in reliance on this exemption.

Use of the Section 3(b)(2) exemption should be available to selling securityholders. Regulation A currently provides that no more than $1.5 million of the $5 million of securities that may be sold in any 12-month period in reliance on Regulation A can be attributable to selling security holders. We suggest that the SEC consider a similar provision in any new exemption adopted under Section 3(b)(2). Section 401 of the JOBS Act requires that the SEC provide that shares issued under the new exemption shall not be restricted securities. This is a clear indication that Congress understood that in order for the exemption to be useful, security holders must have liquidity. If Section 3(b)(2) is solely an issuer exemption, however, the fact that the securities will not be restricted securities will not be enough to provide liquidity. An affiliate will not be able to resell shares it acquires in a Section 3(b)(2) offering easily, because an affiliate would have to find an available exemption in order to resell “control” securities. Expecting the company to file a registration statement under the Securities Act or to provide current public information solely to provide liquidity to affiliates is inconsistent with the purpose of conducting an offering under the new exemption. In light of the Congressional purpose of job creation underlying the JOBS Act, we believe the exemption should be made available to affiliates, including venture capital and private equity investors. Venture capital and private equity investors will be more likely to invest in privately held emerging companies if these investors believe that emerging companies will have a currently unavailable array of liquidity opportunities. Many venture and private equity investors understand that a traditional IPO (even with the Title I “IPO on-ramp” provisions) is unlikely to be a realistic alternative for companies in certain industries. A Section 3(b)(2) offering would offer another liquidity opportunity for these companies. Similarly, for venture and private equity investors that seek to monetize some portion of their holdings, the ability to resell pursuant to Section 3(b)(2) is important.

In considering the use of the exemption for resales, the SEC should modify the existing limitations incorporated in Rule 251 relating to affiliate resales. Under Rule 251(b) affiliate resales are not permitted if the issuer has not had net income from continuing operations in at least one of its last two fiscal years. This limitation may not be appropriate for technology, biotech or drug discovery companies, which devote substantially all of their resources to research and development efforts.

Securities Offered in a Section 3(b)(2) Offering Must be “Covered Securities.” In connection with the National Securities Markets Improvement Act of 1996 (“NSMIA”), Congress authorized the SEC to define the term "qualified purchaser" under the Securities Act to include "sophisticated investors, capable of protecting themselves in a manner that renders regulation by State authorities unnecessary," thus exempting securities transactions with these persons from state "blue sky" laws. In 2001, the SEC proposed to define a “qualified purchaser” to be the same as an “accredited investor” but did not adopt any definition. JOBS Act Section 401 provides that securities offered through the exemption adopted under Section 401 will be "covered securities" under NSMIA if the securities are sold on a national exchange or to qualified purchasers. In order to facilitate appropriate reliance on the new exemption, we believe that the SEC should adopt a definition of “qualified purchaser” and that adopting a definition of “qualified purchaser” that is equivalent to an “accredited investor” will render the new exemption of very limited use. A Regulation A offering was always intended to be sold publicly, and not limited to investors that were “accredited investors.” If the blue sky exemption for a Section 3(b)(2) offering is premised on sales only to “accredited investors,” it is difficult to justify the costs and burdens associated such an offering when contrasted with a Rule 506 offering with no disclosure requirements. We suggest that the SEC consider definitions of “qualified purchaser” that would be more inclusive, and, consequently, of greater utility.

In implementing a definition of “qualified purchaser,” we recommend that the SEC reintroduce a provision that was included in the original legislation to amend Regulation A. This legislation contained the notion that an exemption from state securities law requirements would be available for securities offered through a registered broker-dealer. The registered broker-dealer would act as the gatekeeper, and the broker-dealer will, in discharging responsibly the broker-dealer's know-your-customer and suitability obligations, assess whether an investment in an emerging company through a Section 3(b)(2) offering would be appropriate for a customer. That customer would then be deemed a qualified purchaser. A broker-dealer would be well placed to make a determination regarding a prospective investor's sophistication, investment objectives, and ability to understand the risks associated with an investment in an emerging company. This gatekeeper concept is being applied in the context of the crowdfunding exemption and seems appropriate to reintroduce in the regulations implementing the Section 3(b)(2) exemption.

Disclosure requirements in a Section 3(b)(2) offering. The SEC should consider using the basic framework of Regulation A and updating it in connection with Section 3(b)(2) offerings. With modest modifications, such as the addition of the audited financial statement requirement, Form 1-A could be used for offerings exempt under Section 3(b)(2). The SEC should review the disclosure requirements of Regulation S-K and consider the "scaled" disclosure requirements that are available to smaller companies, and modify these in connection with an updated Form 1-A.

Disclosures should focus on those matters that are of greatest interest and significance to investors. Information accompanied by a blizzard of boilerplate is a diamond in a snow bank: easy to miss. Risk factors should be required to be more sharply focused and limited to a small fixed number risks that are deemed most important by the issuer. They should be written to inform investors rather than confound plaintiffs' attorneys. Companies should not be allowed to obscure their past financial performance under endless footnotes and schedules. Conversely, the SEC should require issuers to provide in the offering statement what investors care about most: valuation assessments and a discussion of management's expectations about the company's future performance.

We believe that investors value companies based on expectations of future results. Every company management creates internal projections to set budgets. These projections should be required in the offering statement. Currently such projections are shared orally by management or research analysts with only the biggest investors, which can create inequity and confusion, as illustrated by Facebook's IPO. Every investment bank provides an issuer's board of directors with an estimate of the company's value and a description of how that estimate was derived. Issuers should be required to provide this valuation information for all offerings made at a fixed price along with a description of how the offering price was determined. Similarly, written research reports should be encouraged and filed publicly as part of the offering statement or as a free writing.

The current practice of submitting the Form 1-A to the SEC by hard copy should be supplemented (or replaced) by an electronic option. We also believe that a Form 1-A should be accessible on EDGAR, although the SEC should consider whether to create confidential submission procedures similar to those designed for Emerging Growth Companies under the JOBS Act for the initial submission.

Section 3(b)(2) IPOs. The new Section 3(b)(2) exemption should be flexible enough to facilitate a contemporaneous listing on a securities exchange for an issuer that elects to become a reporting company following completion of its Section 3(b)(2) offering. Facilitating an exchange listing would be consistent with the SEC's investor protection mission. Currently, an emerging company may be able to satisfy the market capitalization and public float requirements of a securities exchange upon completion of its Section 3(b)(2) offering. However, the current approach for Exchange Act registration would have to be modified in order to make it attractive for smaller issuers. Form 8-A should be amended in order to permit the form to be used by an issuer in connection with listing in conjunction with completing a

Section 3(b)(2) offering. In the absence of amending Form 8-A, an issuer that completes a Section 3(b)(2) offering and seeks to list its securities on a securities exchange would be required to prepare and file with the SEC a registration statement on Form 10. This would be a time-consuming and expensive process. Also, it would seem to eliminate most of the advantages associated with the new exemption. Many of the disclosures currently required to be provided by an issuer in a registration statement on Form 10 could be incorporated as requirements for the Form 1-A.

If the issue of amending Form 8-A can be addressed, it is realistic to contemplate a Section 3(b)(2) initial offering alternative that would address with great efficacy the public capital raising needs of smaller companies, while assuring that such companies will provide robust information to the public; meet appropriate disclosure standards; participate in an iterative though expedited SEC review process; be encouraged to list their securities on a national securities exchange; and undertake, post-offering and listing, to comply with Sarbanes-Oxley and other corporate governance requirements (benefitting from the same phase-in applicable to emerging growth companies) and scaled continuous SEC reporting requirements.

We appreciate the opportunity to submit these comments. We are available to meet and discuss these matters with the SEC and its Staff and to respond to any questions.

Sincerely,

William R. Hambrecht

Chairman and CEO

WR Hambrecht+Co.