



September 23, 2013

U.S. Securities and Exchange Commission  
100 F St., NE  
Washington, DC 20549

Re: Request for Comments on SEC Regulatory Action for the JOBS Act: Title IV-Small Company Capital Formation

Dear Commissioners and Commission Staff:

Thank you for giving growing companies like Fallbrook Technologies the opportunity to comment on the SEC's effort to implement the JOBS Act. We hope our advance comments will help shape the forthcoming Regulation A+ rules in such a way to facilitate continued expansion of young companies. Such expansion will result in new technologies coming to market to improve daily life in various ways while creating well-paying American jobs to spur the economic recovery and accomplish Congress' bipartisan intent in passing the JOBS Act.

Summary:

- In order to successfully accelerate efforts to raise capital by growing companies, the SEC's Regulation A+ proposal should be simple and user-friendly without being complex or cumbersome which will hinder utilization of Reg A+, leaving the promise of the JOBS Act unfulfilled.
- The SEC should act upon Congress' legislative invitation to preempt state securities laws to enable national offerings and, for optimal utilization, should not limit the investor pool to the already existing "accredited investor" cohort.
- Because the increased Reg A+ cap provides better scalability for companies that are maturing beyond their earliest stages, Reg A+ rules should continue to be a top priority of the SEC.
- The proposal should balance the access to capital needs of growing companies with reasonable transparency requirements but ongoing reporting requirements should not be so frequent as to be burdensome.

About Fallbrook Technologies

Fallbrook Technologies Inc. (Fallbrook) is an emerging manufacturing and technology development company dedicated to improving mechanical transmission-based products. Our mission is to deliver the best performing, most versatile and most reliable mechanical power

transmissions in the world. We believe the next generation of transmissions, including our technology, will be less expensive, more effective and better for environmental sustainability.

The Company's core technology is its NuVinci® continuously variable planetary (CVP) transmission system. Fallbrook's NuVinci CVP technology is potentially applicable to improve the performance and efficiency of any product that uses a transmission. Our award-winning technology has been recognized as revolutionary, facilitating partnerships with other companies to commercialize our technology while also providing design, development and manufacturing support.

Instead of the traditional gear and clutch mechanisms found in conventional transmission, the NuVinci continuously variable transmission can change seamlessly through an infinite number of speed ratios between maximum and minimum values. The technology is applicable to products that use a transmission, including bicycles, electric vehicles, outdoor power equipment, agricultural equipment, automobiles and wind turbines.

Fallbrook is based in Cedar Park, Texas near Austin where we employ over 130 people, including about 25 of the best engineers in the transmission sector. Fallbrook currently holds over 500 patents and pending applications worldwide. We have secured major partnerships with global players in the automotive sector to design and develop applications of our transmission technology. We have passed the commercial tests of physics and economics and have partnered with industry leaders.

Fallbrook has grown from negligible revenue in 2009 to nearly \$45 million last year. And that is money that we are investing back into the business to grow. This is a good start, but we have an opportunity to grow and drive innovation faster. *The only thing preventing us from doing this is affordable capital.* Our ability to access capital is one of the MOST significant challenges we face. As CEO, I spend over 50 percent of my time on it.

With additional capital we could expand our manufacturing base in the U.S. and build out our engineering and development team which would create new high technology jobs to accelerate our product development and partnership opportunities. We also believe there would be a significant impact on new job opportunities within both our suppliers and end-user customers, such as automobile manufacturers. As the SEC acts to implement the JOBS Act, it should bear in mind that high-tech engineering and manufacturing jobs are the kinds of jobs America's economy needs because not only do they enhance U.S. competitiveness globally, but they pay above the average salary and wages compared to other sectors.

1. Reg A+ Rules should be simple and user-friendly as to attract utilization which could facilitate significant growth for growing companies across the U.S. like Fallbrook

In the Government Accountability Office's July 2012 report to Congress on "Factors That May Affect Trends in Regulation A Offerings," the GAO noted that the "SEC has previously stated that the primary purpose in adopting Regulation A was to provide a simple and relatively

inexpensive procedure for small business use in raising limited amounts of needed capital.”<sup>1</sup> With such a focus, the Reg A+ changes enacted by the JOBS Act will make acquiring capital less challenging for emerging companies like Fallbrook if the rules present a simple and user-friendly pathway to raising capital.

To meet Fallbrook’s development and expansion needs, an incremental \$5 million round is simply *not* sufficient to fund the type of development and growth that we are targeting. Increasing the cap to \$50 million will satisfy our current capital needs facilitating continued growth, expansion and job creation—all goals of the JOBS Act. However, if the new rules are unclear or engender uncertainty, the preparation time and complexity will hinder the attractiveness of the new Reg A+ offering, continuing Reg A’s current run as a capital raising relic.

2. Because new media platforms expedite a company’s ability to easily share its message nationwide, the Reg A+ Rules should enable national offerings to a new pool of potential investors

The GAO report included input from various stakeholders, stating that “identifying and addressing individual state’s securities registration requirements can be both costly and time-consuming for small businesses.”<sup>2</sup> Additionally, the Commission should consider how communication pathways have radically changed since the last time the Reg A cap was increased. Because of new media and social media platforms, a small businesses message can be rapidly exported to every corner of the U.S., even without the company’s knowledge, thus drastically opening the playing field of where capital can be accessed. This kind of dynamic opportunity for growing companies trying to raise capital from new sources is exactly the kind of opportunity Congress and the President intended to create when they worked in a strong, bipartisan way to enact the JOBS Act.

*It cannot be understated as to how critical state securities law preemption is to ensuring the Reg A+ Rules are user-friendly and attractive for utilization by growing companies.* The practical implication for a company like Fallbrook if preemption does not occur is that the time, expense and potential uncertainty of filing in multiple states could make Reg A+ extremely unattractive as a new capital raising pathway. Undoubtedly, other growing companies would also be resistant to enter the process. Unfortunately, this means that new, well-paying jobs won’t be created, new technologies across various industry sectors will sit dormant, and the public will miss out on new products that could change their lives or advance the common good.

In addition to the GAO’s research showing stakeholders support preemption, the Recommendations of the SEC’s own Forum on Small Business Capital Formation in both 2011 and 2012 strongly supported preemption.<sup>3</sup> However, the most persuasive data on why preemption is necessary to make Reg A+ successful comes from a more recent SEC study.

In July 2013, the SEC Division of Economic and Risk Analysis released an updated report entitled, "Capital Raising in the U.S.: An Analysis of Unregistered Offerings Using the Regulation D Exemption, 2009-2012<sup>4</sup>." In the section where the report compares the dominating prevalence of Rule 506 utilization in contrast to Rule 505 and Rule 504 utilization, the report highlights a remarkable revelation that powerfully makes the case for preemption in Reg A+,

Table 2 shows that Rule 506 is the dominant offering method even among those offerings eligible for Rules 504 and 505. Almost 50% of all Rule 506 offerings by non-funds since 2009 were for \$1 million or less and therefore may have qualified for the Rule 504 exemption based on offering size, but issuers elected to claim the Rule 506 exemption. An additional 20% of offerings were for between \$1 million and \$5 million and therefore could have claimed a Rule 505 exemption based on offering size. *This evidence suggests that the Blue Sky law preemption feature unique to Rule 506 offerings has greater value to issuers than the unique features of Rule 504 or Rule 505 offerings.*<sup>5</sup> (Emphasis added)

Thus, when similarly situated offering exemptions were presented to companies seeking to raise capital, overwhelmingly the companies chose the option which includes preemption. Consequently, if Reg A+ includes the preemption option Congress has allowed, it is more than reasonable to conclude that the attractiveness of Reg A+ will be dramatically increased.

Regarding how to define "qualified purchaser," the attractiveness of the proposal will be enhanced if it encompasses more than the current definition of accredited investor. To restrict the new qualified purchaser definition to the current pool of accredited investors does little to distinguish Reg A+ from already existing capital-raising alternatives. Additionally, to formulate the new definition in such a way as to actually increase criteria greater than the current accredited investor definition would frustrate Congress' invitation for the SEC to act to unlock a currently untapped set of investors in order to spark new economic growth. This new class of investors will certainly need reasonable and appropriate investor protections, but should not be reflexively shielded from being allowed to explore market participation through Reg A+ opportunities.

3. Because the new increased Reg A+ cap provides better scalability for growing companies, the SEC should continue to prioritize action on implementation of Reg A+

Both the GAO Report and the Recommendations from the SEC Forum on Small Business Capital Formation recognized that a contributing factor to the under-utilization of the current Reg A is that the \$5 million cap does not provide enough incentive for a growing company versus the lost opportunity cost of the preparation and process. Stakeholders commenting in both venues believe the increased cap to \$50 million will attract substantial attention of growing companies like Fallbrook. Such companies will have already cleared their early stage hurdles and will be prepared to expand and scale their operations as to generate numerous

well-paying jobs and further R&D investment. A simple and workable Reg A+ would be a viable option for these companies that need to raise capital beyond the limits of crowdfunding but are not yet ready for the IPO On-ramp and do not want to restrict the pool of investors to those under Rule 506. These are some of the companies that the Kauffman Foundation refers to as “gazelle” companies.

In their 2010 report, “High-Growth Firms and the Future of the American Economy<sup>6</sup>,” the Kauffman Foundation, a widely respected research and thought leader on entrepreneurship and young company growth, concluded that “While the previous research has emphasized the importance of new and young companies to job creation overall, this paper focuses on high-growth firms—the so-called ‘gazelles’ that despite their relatively small numbers, nonetheless account for a disproportionate share of job creation.”

At Fallbrook, we consider ourselves one of those high-growth firms. We know there are other gazelles like us that would take advantage of a simple and workable Reg A+ to drive growth.

4. Reporting requirements should include reasonable transparency requirements but should not be so frequent as to be burdensome.

The proposal should strike the right balance between the need for transparency and the burden a company faces in maintaining proper compliance. It should be noted that at a minimum companies will now have to file audited financial statements on an annual basis. Not only are such audits expensive, but they require significant attention by company executives and administrative staff. Yet such audited financial statements will give investors substantial information as to the financial health and structural strength of the company. However, requiring additional quarterly or even semi-annual reporting on par with the expense and administrative attention required for an audit will increase the burden and compliance capacity of companies considering Reg A+.

The SEC should instead consider using the yearly filings as a pilot project for two years to determine if such filings are adequate to provide necessary transparency. During the two year pilot project, the SEC can meet with company and investor stakeholders to ascertain if there are other reasonable transparency options that can be developed to provide valuable information to further heighten investor protections.

## Conclusion

When President Obama signed the JOBS Act, he recognized the promise of the JOBS Act to America’s innovators stating,

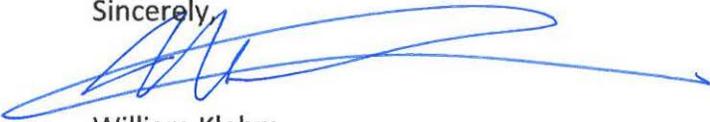
One of the great things about America is that we are a nation of doers -- not just talkers, but doers. We think big. We take risks. And we believe that anyone with a solid plan and

a willingness to work hard can turn even the most improbable idea into a successful business. So ours is a legacy of Edisons and Graham Bells, Fords and Boeings, of Googles and of Twitters. This is a country that's always been on the cutting edge. And the reason is that America has always had the most daring entrepreneurs in the world.

Some of them are standing with me today. When their ideas take root, we get inventions that can change the way we live. And when their businesses take off, more people become employed because, overall, new businesses account for almost every new job that's created in America.

Fallbrook is a poster child for the ideals the President expressed and the promise of the JOBS Act. We thank you for your efforts so far. We would be happy to further assist you in any way beyond these comments or to answer any questions you might have.

Sincerely,



William Klehm  
Chairman and CEO  
Fallbrook Technologies, Inc.

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<sup>1</sup> U.S. Government Accountability Office, GAO-12-839, "Securities Regulation: Factors That May Affect Trends in Regulation A Offerings," p.9, <http://gao.gov/assets/600/592113.pdf>

<sup>2</sup> GAO-12-839, Highlights p.2, <http://gao.gov/assets/600/592113.pdf>

<sup>3</sup> SEC Government Business Forum on Small Business Capital Formation Final Report 2012, pp. 25-26 <http://www.sec.gov/info/smallbus/gbfor31.pdf> and Final Report 2011, pp. 29-30 <http://www.sec.gov/info/smallbus/gbfor30.pdf> The 2013 Forum has not yet taken place.

<sup>4</sup> <http://www.sec.gov/divisions/riskfin/whitepapers/dera-unregistered-offerings-reg-d.pdf>

<sup>5</sup> Id at p. 7.

<sup>6</sup> Kauffman Foundation, "High-Growth Firms and the Future of the American Economy," Introduction, <http://www.kauffman.org/research-and-policy/high-growth-firms.aspx>