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Brent Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

RE: Solicitations of Interest Prior to a Registered Public Offering

File No. S7-01-19

Hamilton & Associates, a boutique securities law firm in Boca Raton, Florida, would like to take this opportunity to comment on the Commission's proposed rule concerning solicitations of interest prior to a registered public offering.

In our view, Proposed Rule 163B is a common sense proposal that will extend benefits granted emerging growth companies (EGCs) by the JOBS Act to all issuers. Since 2012, EGCs planning an initial public offering (IPO) have been free to "test the waters" by soliciting interest from potential investors, as long as the issuer believes those investors are qualified institutional buyers (QIBs) or institutional accredited investors (IAIs).

There seems to us to be no reason not to extend that benefit to non-EGCs, whether they are conducting primary or secondary offerings. If an issuer, or an agent of an issuer like an underwriter, is permitted to communicate with potential investors prior to or following the filing of a registration statement, the issuer, the potential investors, and ultimately the investing public will benefit. The issuer will be able to form an idea about the level of the potential investors' interest, which will help it avoid a failed offering. The QIBs and IAIs will obtain information that may give them greater confidence in their eventual investment, and may encourage them to increase it. As the Commission points out, the new rule would benefit the broader markets by increasing the number of offerings, and an increased number of offerings would create more investment opportunities for retail investors as well as institutional investors.

"Testing the waters" is currently practiced around the globe. Allowing it for non-EGCs—some of which are very large and successful companies—may encourage them to choose our markets to launch their IPOs, rather than go elsewhere.

One of the Commission's chief concerns is for investor protection. The investors Rule 163B addresses are QIBs and IAIs, and are therefore presumed to be seasoned and sophisticated. The Commission asks whether issuers that wish to test the waters by communicating with them should first be required to verify investor status, as is required by Rule 506(c) of Regulation D. As formulated, the new rule specifies only that the issuer must have a "reasonable belief" that the investors they approach qualify as QIBs and IAIs. Given that the investors will not actually invest until a registration statement has been filed, we believe the "reasonable belief" requirement is adequate.

For those who may not be convinced that investor protections contained in the new rule are enough, the Commission suggests alternatives to portions of it. It suggests, among other things, that certain categories of issuers be excluded: blank check issuers, special purpose acquisition companies (SPACs); penny stock issuers; asset backed securities (ABS) issuers; and all or some registered investment companies.

While it is undeniable that blank check companies and penny stocks may from time to time engage in offerings that are problematic, and that ABS offerings can be extremely complicated and difficult to understand, there seems to be no real reason to bar them, or any other type of company, from enjoying the benefits of Rule 163B. When the JOBS Act became law, a number of SPACs automatically qualified as EGCs. The same is true for penny stocks that are SEC registrants. The Commission points out that as of 2017, 20 percent of the 213 known blank check companies were not EGCs. During the same year, 1,418 SEC-registered penny stocks—issuers whose stock trades below \$5 a share—were actively trading on OTC Link. Only 38 percent of them were EGCs.

Thanks to the JOBS Act, the SPACs and penny stocks that are EGCs can engage in testing the waters communications when they make offerings. We agree with the Commission that it would be inequitable to exclude non-EGCs from whatever benefits they may feel Rule 163B has to offer. Many are more likely to rely on private placements to raise funds than on more costly public offerings, in any case. Whether they choose that route or not, they should stand on an equal footing with similar issuers that are EGCs.

The Commission suggests that “[a]s an alternative, we could limit the scope of permissible test-the-waters communications to certain types of information about the issuer or offering.” This seems to offer little real benefit to investors, especially given that there would be no restriction on the use made of testing the waters communications by EGCs.

The new Rule 163B is, as the Commission says, an attempt to level the playing field for EGCs and non-EGCs engaging in offerings. As such, we believe it is uncontroversial and should be implemented quickly.

Sincerely,



Brenda Hamilton, Esq.
For the Firm